

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PRISCILLA GHANS,)
)
 Petitioner,)
)
 vs.) Case No. 97-4949
)
 DEPARTMENT OF CHILDREN)
 AND FAMILY SERVICES,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Upon due notice, William R. Cave, an Administrative Law Judge for the Division of Administrative Hearings, held a formal hearing in this matter on January 14, 1998, in Labelle, Florida.

APPEARANCES

For Petitioner: Priscilla Ghans, pro se
Post Office Box 2252
Clewiston, Florida 33440

For Respondent: Eugenie G. Rehak, Esquire
Department of Children
and Family Services
Post Office Box 60085
Fort Myers, Florida 33906

STATEMENT OF THE ISSUE

Should Petitioner's application for foster home licensure be granted?

PRELIMINARY MATTERS

By letter dated September 4, 1997, the Department of Children and Family Services (Department) advised Petitioner that her application for licensure as a foster home had been denied.

The basis of the denial was: (a) Petitioner's failure to meet minimum standards concerning sufficient income for foster home; (b) that a current member of Petitioner's household had been convicted of criminal offenses which were disqualifying offenses under Chapter 435, Florida Statutes; and (c) Petitioner's inappropriate actions concerning E. O., a foster child previously under Petitioner's care. Additionally, the Department advised Petitioner of her right to a formal hearing.

By letter dated September 29, 1997, Petitioner requested a hearing pursuant to Chapter 120, Florida Statutes.

By a Notice dated October 20, 1997, the Department referred this matter to the Division of Administrative Hearings (Division) for the assignment of an Administrative Law Judge and for the conduct of a hearing.

At the hearing, Petitioner testified in her own behalf and presented the testimony of Hyacinth Ewin and Samuel Simmons. Petitioner's Composite Exhibit One and Exhibit Two were received as evidence. Petitioner's Exhibit Three was rejected. The Department presented the testimony of Michele Altman, Leola Horton, Valerie Walter, Linda Tillman, and Patricia Richardson. The Department's Exhibits A-3 through A-9 were received as evidence. Rules 65-13.010 and 65-13.011, Florida Administrative Code, were officially recognized.

There was no transcript of this proceeding filed with the Division. At the conclusion of the hearing, the Court Reporter

was instructed to retain all of the exhibits so that she could copy the exhibits and furnish the parties copies, where necessary. By letter dated February 16, 1998, the Court Reporter returned two exhibits to the undersigned and advised the undersigned that, where necessary, copies of the exhibits had been furnished to the parties. By order dated February 18, 1998, the parties were advised that they had until 5:00 p.m. on March 4, 1998, to file their respective proposed recommended orders. The Department timely filed its proposed recommended order under the extended time frame. Petitioner elected not to file a proposed recommended order.

FINDINGS OF FACT

Upon consideration of the oral and documentary evidence adduced at the hearing, the following relevant findings of fact are made:

1. Petitioner operated a family foster home at 1028 Mississippi Avenue, Clewiston, Florida, which had been licensed by the Department or its predecessor, Department of Health and Rehabilitative Services, from April 18, 1991, through April 1, 1997.

2. In December 1996, the Petitioner was advised that the Department's licensing staff would be recommending that Petitioner's family foster home not be granted licensure at the end of Petitioner's current licensure period of April 1, 1997.

3. By letter dated March 17, 1997, the Department advised Petitioner that the Department would not be furnishing her a packet for relicensure except upon request by Petitioner. Subsequently, Petitioner requested a relicensure packet and made application for relicensure of her family foster home located at 1028 Mississippi Avenue, Clewiston, Florida.

4. After reviewing Petitioner's application for renewal of her family foster home license, the Department, by letter dated September 4, 1997, advised Petitioner that her application for renewal of her family foster home located at 1028 Mississippi Avenue, Clewiston, Florida, had been denied. The denial letter provides in pertinent part as follows:

The Department of Children and Families hereby denies Priscilla Ghans a license for purposes of providing substitute care for children in the custody of the State of Florida and in support thereof, would show the following:

1. Ms. Ghans' current income and expenses are insufficient to meet the requirements of Rule 65C-13.025(5), Florida Administrative Code. (Formerly known as Rule 10M-6 F.A.C.)
2. Paul Beadle, a current household member, has criminal offenses which are disqualifying within Chapter 435 of the Florida Statutes. In accordance with Section 409.175(5)(h), Florida Statutes, a license may not be issued if any member of the household failed to pass background screening.
3. In addition, Priscilla Ghans was licensed as a foster parent in 1996. E.O. was a foster child placed in her home in 1996. During his placement, Ms. Ghans failed to provide adequate supervision which is a violation of Sections 409.175(4)(a)(1,2,4)

and (8)(b)1, Florida Statutes and Rule 65C-13.024(1)(b)(1,a), Florida Administrative Code.

4. When E. O. left her home, his personal belongings were placed in a garbage bag along with trash and debris. The majority of his clothes were unwearable in that they were too small or unsuitable. This is a violation of Rule 65C-13.024(1)(b)(1,c) and (3,a-d) Florida Administrative Code. . . .

5. Petitioner's monthly expenses total \$491.00.

Petitioner's monthly income from Social Security and SSI total \$504.00.

6. A Financial Statement filed with the Department by Petitioner refers to Petitioner having a savings account but does not indicate the amount of the savings account or if this savings account is available for monthly expenses. Neither the Department nor Petitioner offered any other evidence concerning this savings account.

7. Likewise, there was testimony that Petitioner's son, Paul Beadle, paid Petitioner room and board while with Petitioner. However, there was no evidence as to the amount Beadle paid Petitioner for room and board.

8. On June 23, 1997, Beadle pled nolo contendere to: (a) possession of cocaine, a third degree felony, and a violation of 893.13(6)(a), Florida Statutes; (b) possession of marijuana (20 grams or less), a first degree misdemeanor, and a violation of Section 893.13(6)(b), Florida Statutes; and (c) possession of paraphernalia, a first degree misdemeanor, and a violation of

Section 893.147, Florida Statutes. Since the felony offense was committed less than three years ago, Beadle cannot be granted an exemption from disqualification under Section 435.07(1)(a), Florida Statutes.

9. Paul Beadle lived in the home with Petitioner up until July 1997. Although Petitioner has never established the date that Beadle moved from her home, she contends that Beadle has moved out of her home. However, Petitioner testified that in the past when Beadle wanted to return, she has always allowed him to move back home.

10. E.O., a foster child approximately 13 years of age, was placed in Petitioner's family foster home in 1996. After his placement, Petitioner allowed E.O. to attend a block party in the neighborhood without being under her supervision or the supervision of any properly screened adult. Around 11:00 p.m., E.O. had to bang on the door in order to get in since Petitioner had gone to sleep.

11. On another occasion, E.O. made plans to stay overnight with a friend. However, the friend's parents had not been screened to supervise foster children. On this occasion, the father of the friend called Petitioner to advise her that E.O. could not spend the night. Although E.O. did not return home until the next morning, Petitioner did not contact law enforcement or the Department.

12. Petitioner also went shopping without advising E.O. that she was leaving or when she would return. E.O., who had never been given a key by Petitioner, attempted to break into Petitioner's home.

13. E.O. was removed from Petitioner's care in August 1996 on an emergency basis when E.O. threatened suicide. Subsequently, E.O.'s clothing was retrieved from Petitioner in two plastic bags and delivered to Valerie Welter, foster parent who had taken E.O. Upon opening the bags of clothing, it was clear that Petitioner had failed to properly maintain the clothes and had failed to furnish E.O. with clothes of the proper size.

CONCLUSIONS OF LAW

14. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to Sections 120.57(1), Florida Statutes.

15. Sections 409.175(1)(a), (2)(c),(e),(i),and (k), (4)(a)2., 5.,and 8., (5)(h), and (8)(a),(b)1.,2.,3.,and 4., Florida Statutes, provide in pertinent part as follows:

(1)(a) The purpose of this section is to protect the health, safety, and well-being of all children in the state who are cared for by family foster homes, residential child-caring agencies, and child-placing agencies by providing for the establishment of licensing requirements for such homes and agencies and providing procedures to determine adherence to these requirements.

* * *

(2) As used in this section, the term:

* * *

(c) "Child" means any unmarried person under the age of 18 years.

* * *

(e) "Family foster home" means a private residence in which children who are unattended by a parent or legal guardian are provided 24-hour care. . . .

* * *

(f) "License" means "license" as defined in s. 120.52(9). A license under this section is issued to a family foster home or other facility and is not a professional license of any individual. Receipt of a license under this section shall not create a property right in the recipient. A license under this act is a public trust and a privilege, and is not an entitlement. This privilege must guide the finder of fact or trier of law at any administrative proceeding or court action initiated by the department.

* * *

(i) "Personnel" means all owners, operators, employees, and volunteers working in a . . . family foster home. . . . For purposes of screening, the term shall include any member, over the age of 12 years, of the family of the owner or operator or any person other than a client, over the age of 12 years, residing with the owner or operator if the agency or family foster home is located in or adjacent to the home of the owner or operator or if the family member of, or person residing with, the owner or operator has any direct contact with the children.

* * *

(k) "Screening" means the act of assessing the background of personnel and includes, but is not limited to, employment history checks as provided in Chapter 435, using level 2 standards for screening set forth in that chapter.

* * *

(4)(a) The department shall adopt and amend licensing rules for family foster homes, residential child-caring agencies, and child-placing agencies. . . . The requirements for licensure and operation of family foster homes, residential child-caring agencies, and child-placing agencies shall include:

* * *

2. The provision of food, clothing, educational opportunities, services,

equipment, and individual supplies to assure the healthy physical, emotional, and mental development of the children served.

* * *

5. The good moral character based upon screening, education, training, and experience requirements for personnel.

* * *

8. Satisfactory evidence of financial ability to provide care for the children in compliance with licensing requirements.

* * *

(5)(h) Upon determination that the applicant meets the state minimum licensing requirements, the department shall issue a license without charge to a specific person or agency at a specific location. A license may be issued if all screening materials have been timely submitted; however, a license may not be issued or renewed if any person at the home or agency has failed the required screening.

* * *

(8)(a) The department may deny, suspend, or revoke a license.

(b) Any of the following actions by a home or agency or its personnel is ground for

denial, suspension, or revocation of a license:

1. An intentional act or negligent act materially affecting the health or safety of children in the home or agency.
2. A violation of the provisions of this section or of licensing rules promulgated pursuant to this section.
3. Noncompliance with the requirements for good moral character as specified in paragraph (4)(a).
4. Failure to dismiss personnel found in noncompliance with the requirements for good moral character. (Emphasis Furnished)

16. Section 435.04(2)(cc), Florida Statutes, provides as follows:

(2) The security background investigations under this section must ensure that no persons subject to the provisions of this section have been found guilty of, regardless of adjudication, of entered a plea of nolo contendere or guilty to, any offense prohibited under any of the following provisions of the Florida Statutes or under any similar statute of another jurisdiction.

* * *

(cc) Chapter 893, relating to drug abuse prevention and control, only if the offense was a felony or if any other person involved in the offense was a minor.

17 Rule 65C-13.010(1)(b)1.a., 3.a. c. and d., provides as follows:

(1) Responsibilities of the Substitute Parent to the Child.

* * *

(b) Family Care Activities.

1. Daily living tasks.
 - a. The substitute parents are expected to provide structure and daily activities designed to promote the individual physical, social, intellectual, spiritual, and emotional development of the children in their home.

* * *

3. Clothing and Personal Belongings.

a. All children should be provided with their own clean, well-fitting, attractive clothing appropriate to their age, sex and individual needs, in keeping with community standards and appropriate to the season.

* * *

c. All children must be allowed to bring, retain and acquire personal belongings while in care. Substitute parents must help each child protect and preserve possessions which are important to the child.

d. When the child leaves the family home the substitute care parents must send along with him all serviceable clothing and personal belongings bought for, earned or given to the child. This includes any toys, bicycles, radios, or other things that are the child's personal belongings.

18. The reference to Rules 65C-13.024 and 65C-13.025, Florida Administrative Code, in the Denial of Foster Home License is clearly a scrivener's error since these rules have never been promulgated by the Department. However, during the hearing Petitioner was made aware that the Department was relying on Rules 65C-13.010 and 65C-13.011, Florida Administrative Code, rather than the rules cited in the denial letter. In fact, the Department requested and was granted official recognition of Rules 65C-13.010 and 65C-13.011, Florida Administrative Code, without objection from Petitioner. Likewise, Petitioner was on notice of the statutory violations that the Department was relying upon.

19. The burden is upon the Petitioner to establish facts to show her entitlement to licensure as a family foster home. Although Petitioner's son, Paul Beadle is no longer living in

Petitioner's home and would not prevent Petitioner from being licensed, Petitioner has committed other serious statutory and rule violations which prevent her licensure as a family foster home. Petitioner has failed to meet her burden to show entitlement to licensure as a family foster home.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is recommended that the Department enter a final order denying Petitioner's application for licensure as a family foster home.

DONE AND ENTERED this 21st day of May, 1998, in Tallahassee, Leon County, Florida.

WILLIAM R. CAVE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 21st day of May, 1998.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.