

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN AND)
FAMILY SERVICES,)
)
Petitioner,)
)
vs.) Case No. 98-2896
)
DONNA VERMEULEN,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was conducted in this case on October 14, 1998, in Miami, Florida, before Administrative Law Judge Michael M. Parrish, of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Rosemarie Rinaldi, Esquire
Department of Children and Family Services
401 Northwest Second Avenue, Suite N-1014
Miami, Florida 33128

For Respondent: Oscar Estevez, Esquire
1835 West Flagler Street, Suite 201
Miami, Florida 33135

STATEMENT OF THE ISSUES

The basic issue in this case is whether the Respondent, Donna Vermeulen, is eligible to be relicensed as a family foster home.

PRELIMINARY STATEMENT

By letter dated November 24, 1997, the Department of

Children and Family Services (DCFS) advised the Respondent that the DCFS was not going to renew the Respondent's family foster home license. The letter specified several reasons for the proposed denial of license renewal. Thereafter, the Respondent requested an evidentiary hearing. On June 29, 1998, the DCFS referred the matter to the Division of Administrative Hearings for assignment to an administrative law judge. At the final hearing on October 14, 1998, the DCFS presented the testimony of eight witnesses and offered twelve exhibits, all of which were received in evidence.¹ The Respondent testified on her own behalf and presented the testimony of one additional witness. The Respondent also offered one composite exhibit, which was received in evidence.

At the conclusion of the hearing, the parties were allowed 30 days from the date of the hearing within which to file their respective proposed recommended orders. Thereafter, on motion by the DCFS, the deadline was extended to December 1, 1998, for all parties. The DCFS filed a timely proposed recommended order containing proposed findings of fact and conclusions of law. As of the date of this Recommended Order, the Respondent has not filed any post-hearing documents.

FINDINGS OF FACT

1. The Respondent was licensed as a family foster home in Dade County, Florida, for approximately 19 years. The Respondent had received all of the training that was required for such a

license.

2. In 1997, Rosemary Bridges was a foster care counselor employed by the DCFS. In June of that year, Ms. Bridges was assigned to be the foster care counselor for three of the four foster children who were living with the Respondent at that time. Shortly after her assignment as foster care counselor for those children, Ms. Bridges made her first visit to the Respondent's home to check on the status of the children.

3. On her first visit to the Respondent's home, Ms. Bridges found the home to be untidy and unclean. There were clothes everywhere, dishes piled up, and no linen on the children's beds. The children all looked unkempt. The hair was not combed on any of the children. Ms. Bridges thought the general condition of the Respondent's home was potentially hazardous to the health of the foster children and she considered the possibility of removing the foster children from the home.

4. On the day of Ms. Bridges' first visit, a therapist was also present. Ms. Bridges and the therapist discussed the situation with the Respondent. On that day the Respondent's arm was in a cast, and the Respondent explained that, because she had a broken arm, she was not able to take care of the house and the foster children as well as she usually did. The foster children had been with the Respondent for a long time, and the Respondent wanted them to continue to stay with her. Following the discussion with the Respondent, Ms. Bridges decided not to remove

the foster children from the Respondent's home. Instead, Ms. Bridges made arrangements with the Children's Home Society for the Respondent to receive services for herself and for the foster children.

5. Ms. Bridges returned to the Respondent's home a month later. The condition of the home was the same as it was during the June visit. The foster children were again unkempt and unclean. At the time of the visit, Ms. Bridges was also concerned about reports of inappropriate activities involving the foster children and one of the Respondent's two sons.² Ms. Bridges and the children's therapist continued to work with the Respondent in an effort to improve the situation in the Respondent's home.

6. Sara Leidtke is a mental health counselor who works primarily with children in foster homes, doing intensive on-site therapy. In February of 1997, Ms. Leidtke began providing therapy to three of the foster children in the Respondent's home. Ms. Leidtke continued to provide therapy twice a week to those children while they were living with the Respondent.³ All three of the foster children were supposed to be taking medication prescribed by a physician at the clinic where Ms. Leidtke worked. The medication was to treat hyperactivity and depression. One of the foster children was having nightly episodes of bed-wetting. On numerous occasions Ms. Leidtke recommended that the Respondent take that child to the enuresis clinic for treatment. The same

recommendation was made by the physician who was treating the child's psychological problems. The Respondent never took that foster child to the enuresis clinic.

7. From February of 1997 through August of 1997, Ms. Leidtke was concerned about the personal hygiene of the three foster children to whom she was providing therapy services. Ms. Leidtke described her concerns in the following words:⁴

All three of the children exhibited poor hygiene while in the Vermeulen home. Their clothes were often soiled, their hair dirty, and they were often unbathed with a strong body odor. This therapist worked with them on this and gave Mrs. Vermeulen a hygiene checklist to utilize with them. The children spent a great deal of time working on this during therapy, but this therapist had difficulty getting Mrs. Vermeulen to follow through with checklists on days that therapy did not take place. On a number of occasions, the children stated that they were not able to attend to their hygiene because they did not have toothbrushes or other personal items. [J.] stated numerous times that she did not ever wash her hair, and that she did not use deodorant/antiperspirant because the family shared one roll-on deodorant and she did not want to use it or could not find it. When asked about these difficulties, Mrs. Vermeulen stated that the children were lying and that she was waiting on a check to buy the items that they needed. On two separate occasions, this therapist arranged for a PsychSolutions Activities Coordinator to come to the home to do the children's hair, but Mrs. Vermeulen canceled both appointments.

8. In August of 1997, Ms. Bridges made another visit to the Respondent's home. Again, the condition of the home was the same as it had been on the two prior visits. Again, the foster

children were unkempt and unclean. Ms. Bridges decided, primarily because of the lack of improvement in the condition of the home and the lack of improvement in the care of the foster children, that the foster children should be relocated to another foster home. In the course of making arrangements for the relocation, Ms. Bridges discovered a several month supply of prescription medicines for the three foster children. The amount of the prescription medicines in the home confirmed that the foster children had not been taking the medicines with the frequency prescribed by the physician.

9. On August 29, 1998, when Ms. Leidtke arrived at the Respondent's home, she found that the Respondent's other son, M. V., was sitting at the Respondent's home visiting with the Respondent. M. V. is the Respondent's adopted son. In August of 1997, M. V. was 18 or 19 years old. On that day, M. V. had apparently escaped from a residential treatment program, where he had been confined for approximately four years. M. V. was being treated because, approximately four years earlier, he had sexually assaulted one of the Respondent's foster children, as well as the Respondent's adopted daughter. The foster child who had been sexually assaulted by M. V. was still living in the Respondent's home. M. V.'s presence in the home was very upsetting to that child. Later the same day, the police were called and the police returned M. V. to the treatment facility from which he had escaped.

10. On August 29, 1997, the DCFS removed the foster children from the Respondent's home and placed them in another foster home.

CONCLUSIONS OF LAW

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

12. As an applicant for license renewal, the Respondent in this case, Donna Vermeulen, bears the burden of proving entitlement to the license she seeks to have renewed. Florida Department of Transportation v. J. W. C. Co., Inc., 396 So. 2d 778, 788 (Fla. 1st DCA 1981). The applicant must show by a preponderance of the evidence that she meets all of the relevant statutory and rule criteria to satisfy this burden.⁵

13. A "license" for purposes of Section 409.175, Florida Statutes, is defined in Section 409.175(2) as follows:

(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.

14. Subsection (4) of Section 409.175, Florida Statutes, authorizes the DCFS to adopt rules for foster care homes. Such rules have been promulgated and now appear in Chapter 65C-13,

Florida Administrative Code. Rule 65C-13.010, Florida Administrative Code, titled Substitute Care Parents' Role as a Team Member, includes the following relevant provisions:

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

* * *

(b) Family Care Activities.

1. Daily living tasks.

a. The substitute care 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.

* * *

6. Health Care.

* * *

b. The substitute care parents are expected to transport children for medical, dental or other appointments which may be needed.

* * *

d. The substitute care parents must immediately report to the department any serious changes in the health or mental health of a child.

15. Rule 65C-13.011, Florida Administrative Code, titled Minimum Standards for Licensure of Family Foster Homes, Family Emergency Shelter Homes and Family Group Homes, contains the following relevant provisions:

(11) Physical Environment.

* * *

(b) The home and premises must be free from objects, materials, and conditions which constitute a danger to children.

* * *

(13) Interior environment.

* * *

(g) The home must be clean and free of hazards to the health and physical well-being of the family.

* * *

(17) Medical Care. Substitute care parents must be able to understand and willing to carry out home medical care prescribed by a licensed physician. Medication should not be given without first consulting the physician. . . .

16. Section 409.175(8), Florida Statutes, reads as follows:

(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 a ground for denial, suspension, or revocation of a license:

1. An intentional 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 requirements for good moral character.

17. The facts in this case establish that, on more than one occasion, the Respondent engaged in intentional or negligent conduct materially affecting the health and safety of foster children in her home. The facts in this case also establish that, on more than one occasion, the Respondent engaged in conduct that violated one or more of the rule provisions, quoted above, promulgated pursuant to Section 409.175, Florida Statutes. In view of the nature of the conduct described in the findings of fact, the Respondent is not an appropriate person to be trusted with the care of foster children, and her application for renewal of her family foster home license should be denied.

RECOMMENDATION

Based on all of the foregoing, it is RECOMMENDED that a final order be issued in this case denying the Respondent's application for renewal of her family foster home license.

DONE AND ENTERED this 15th day of March, 1999, in
Tallahassee, Leon County, Florida.

MICHAEL M. PARRISH
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of March, 1999.

ENDNOTES

1/ The Petitioner's twelve exhibits received in evidence are numbered 1 through 7 and 9 through 13. There is no Petitioner's Exhibit 8.

2/ The foster children's' therapist had reported to Ms. Bridges that the foster children had told her about an incident at the home of the Respondent's son, B. V. The children had told the therapist that B. V. had forced the children to smoke cigarettes and that B. V. and B. V.'s girlfriend had urinated and defecated on the floor in the presence of the foster children. These allegations were reported to the abuse hotline. The Respondent denied that her son, B. V., had ever engaged in such conduct. There is insufficient evidence in the record of this case to determine where the incident described by the children actually happened.

3/ Ms. Leidtke also continued to provide therapy to the children after they were moved to a new foster home.

4/ See Petitioner's Exhibit 3, second page, second full paragraph.

5/ In view of the nature and the posture of this case, Donna Vermeulen should have been designated as the Petitioner in this case, and the DCFS should have been designated as the Respondent. Regardless of such designations, in a case of this nature, unlike a case involving the revocation of a license, the burden of proof

rests with the applicant.

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.