

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SHERILL P. GOMEZ,)
)
 Petitioner,)
)
 vs.) Case No. 98-5078
)
 DEPARTMENT OF CHILDREN AND)
 FAMILY SERVICES,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly-designated Administrative Law Judge, Mary Clark, held a formal hearing in the above-styled case on March 31, 1999, by videoconference. The Administrative Law Judge presided from Tallahassee, Florida; the parties, their witnesses, and the court reporter participated from Orlando, Florida.

APPEARANCES

For Petitioner: Sherill Gomez
3689 Penshurst Place
Kissimmee, Florida 34758

For Respondent: Carmen M. Sierra, Esquire
Department of Children and
Family Services
400 West Robinson Street
Suite S-1106
Orlando, Florida 32801

STATEMENT OF ISSUES

The issue for disposition in this proceeding is whether Petitioner is entitled to relicensure as a family day-care home.

PRELIMINARY STATEMENT

On October 13, 1998, the Department of Children and Family Services (DCFS) notified Ms. Gomez that her application for a family day-care home was denied for failure to meet minimum standards required by Chapter 402, Florida Statutes. Specifically, the notification letter cited violations regarding supervision of children in the home.

Ms. Gomez requested a formal evidentiary hearing and the case was referred to the Division of Administrative Hearings.

At the hearing Ms. Gomez testified in her own behalf and presented a single exhibit, a videotape of her home. That exhibit, marked and received as Petitioner's Exhibit No. 1, has been viewed and considered by the Administrative Law Judge.

DCFS presented the testimony of Barbara Ivey and Kathy Swaggerty. DCFS also presented a copy of Ms. Gomez's prior provisional license and Barbara Ivey's inspection report, marked and received in evidence as Respondent's Exhibits Nos. 1 and 2.

Neither party filed a proposed recommended order nor filed the transcript.

FINDINGS OF FACT

1. Sherill Gomez resides in Kissimmee, Osceola County, Florida, and had a provisional license to operate a family day-care home at her residence. The license was issued on April 13, 1998, and expired six months later on October 13, 1998.

2. In 1989, Ms. Gomez was involved in an incident of child neglect. She had been babysitting in her home and left two children under the age of 3 sleeping but unattended when she went out shopping. In her absence a 2 1/2-year-old, Andre, got out the door and was picked up by the police. When Ms. Gomez returned she called the police and learned that they had Andre. Apparently all she knew about the child's mother was that she worked at Disney Village.

3. Ms. Gomez took a three-hour course for family day-care and received explicit instructions regarding her duty to provide adult supervision at all times, both inside and outside the house. When she applied for licensure and assured DCFS that the 1989 incident never would occur again, the licensing supervisor, Kathy Swaggerty, agreed to a six-month provisional license with close agency scrutiny of the home during that period.

4. During the provisional license period, Barbara Ivey inspected Ms. Gomez's home several times, both announced and unannounced. She found several violations in July 1998 regarding record-keeping, bedding for the children, and access to unsafe items such as bleach, kitty litter, a weed-wacker, bicycles, and barbeque grills. Concerned that Ms. Gomez did not understand her obligation, Ms. Ivey spent about two and one-half hours with her

on that visit explaining the rules. Ms. Ivey also explained the importance of adequate supervision.

5. Ms. Ivey returned on August 5, 1998, and found some violations had been corrected, but there were still problems with two of the children's records; the bicycles were still accessible, and the carpet was dirty. On a subsequent visit in August everything but a nutrition card for one infant had been corrected. Ms. Ivey and Ms. Gomez discussed supervision again and Ms. Ivey emphasized that with one adult caregiver all of the children needed to be in the house or out in the play yard together.

6. Ms. Gomez applied for relicensure and Ms. Ivey scheduled another inspection visit on September 30, 1998, shortly before the provisional license was due to expire.

7. Ms. Ivey arrived at the home and was admitted by Ms. Gomez, who led her into the kitchen area where there was a round table with chairs in front of a large picture window looking onto the backyard. Through the window Ms. Ivey could see two children, ages 3 and 4 years, playing in the yard. A 5-month old infant was in a carry-all near the table in the kitchen. Ms. Ivey told Ms. Gomez that the children needed to come in. Ms. Gomez said that the children were all right, that they could

be watched through the window, but Ms. Ivey insisted that the children should come in.

8. When Ms. Ivey went out the backdoor she found another child, an infant, sitting alone on the patio out of view of the window and unable to be observed from inside the house. The backyard is not fenced and leads into a wooded area. The infant could have crawled away into that area.

9. After the children were brought inside Ms. Ivey continued with her inspection but explained that the lack of supervision was a problem. Ms. Gomez also had six children enrolled, a number which was in excess of her approved capacity when her own child was home from school. In the October 13, 1998, license denial letter, inadequate supervision was the specific basis for DCFS' finding that Ms. Gomez's home failed to meet minimum standards.

10. At the hearing Ms. Gomez explained that the reason the children were left alone is that she had to go the door when Ms. Ivey arrived. This explanation does not justify her leaving the infant alone unobserved on the patio nor does it justify Ms. Gomez's delay in retrieving the children after Ms. Ivey's arrival. Moreover, under DCFS standards, she should have brought all of the children inside when she went into the house.

CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction in this proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

12. In this case, Ms. Gomez has the ultimate burden of proving her entitlement to the license she seeks; DCFS has the burden of proving that she committed the violations that would make her unfit for licensure. Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996).

13. Section 402.313, Florida Statutes, authorizes DCFS to license family day-care homes. Rule 65C-20.009, Florida Administrative Code, requires that operators of family day-care homes must provide supervision of the children in their care and must be able to respond to the emergencies and needs of children: "During daytime hours of operation children shall have adult supervision which means watching and directing children's activities, both indoors and outdoors, and responding to each child's needs."

14. DCFS met its burden of proving that Ms. Gomez failed to provide adequate supervision when she left an infant unattended on a patio. Ms. Gomez did not establish her entitlement to licensure.

RECOMMENDATION

Based on the foregoing, it is

RECOMMENDED: that the Department of Children and Family Services enter its final order denying Sherill Gomez' application for family day-care home licensure.

DONE AND ENTERED this 7th day of May, 1999, in Tallahassee, Leon County, Florida.

MARY CLARK
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 7th day of May, 1999.

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.