

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FELICIA DOZIER,)
)
 Petitioner,)
)
 vs.) Case No. 00-1732
)
 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 on November 7, 2000, in Sebring, Florida.

APPEARANCES

For Petitioner: James W. Aaron, Qualified Representative
Aaron's Paralegal Center
819 North Highlands Avenue
Sebring, Florida 33871

For Respondent: Jack Emory Farley, Esquire
Department of Children and
Family Services
4720 Old Highway 37
Lakeland, Florida 33813d-2030

STATEMENT OF THE ISSUE

Should Petitioner's license as a foster parent be revoked, suspended, or otherwise disciplined?

PRELIMINARY STATEMENT

By letter dated March 6, 2000, the Department of Children and Family Services (Department) advised Petitioner that by the

authority granted the Department under Section 409.175(8), Florida Statutes, it was revoking her license (Number 1298-06) as a foster parent. As grounds therefor the Department alleged that Respondent: (a) violated Rule 65C-13.010(1)(b)1.a., 3.a., and 5.e., Florida Administrative Code, in that Petitioner allowed a foster child to live and attend school in soiled dirty clothing (child had strong urine odor) without providing the school a change of clothing for the child after several requests; and (b) violated Rule 65C-13.010(1)(b)5.a., e., and f., Florida Administrative Code, in that Petitioner subjected a foster child in her home to corporal punishment and allowed another adult to use corporal punishment on the child. By letter dated March 17, 2000, Petitioner requested a formal hearing under Chapter 120, Florida Statutes. By letter dated April 6, 2000, Petitioner denied the allegations contained in the Department's revocation letter dated March 6, 2000. By Notice dated April 21, 2000, the Department referred the matter to the Division of Administrative Hearings (Division) for the assignment of an Administrative Law Judge and for the conduct of a formal hearing.

At the hearing, the Department presented the testimony of Felicia Dozier, Norberta Tijerina, and Gloria Matthews. The Department's Exhibit numbered 1 was admitted in evidence. Petitioner testified in her own behalf and presented the testimony of Willie Wilson, Jr. and Elizabeth Glenn. Petitioner

did not present any documentary evidence. Rule 65C-13.010, Florida Administrative Code, was officially recognized.

There was no transcript of this proceeding filed with the Division. On Petitioner's unopposed ore tenus motion for extension of time to file proposed recommended orders, the time for filing proposed recommended orders was extended until 5:00 p.m., November 22, 2000. The parties timely filed their proposed recommended orders under the extended time frame.

FINDINGS OF FACT

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

1. The Department is the agency of the State of Florida charged with the responsibility of issuing and disciplining foster parent licenses.

2. At all times pertinent to this proceeding, Petitioner was licensed as a foster parent, having been issued license Number 1298-06 by the Department.

3. On September 25, 1999, the Department received a report on the abuse hotline (Abuse Report numbered 1999-122259) alleging, among other things, that: (a) Petitioner was not providing sanitary living condition for the foster children under her care; (b) the house smelled of urine; (c) there were dirty dishes in the sink, and in the living room, den, and bedrooms; (d) the house was infested with termites and roaches; (e) the

bathroom had dirty clothes all over the floor and on top of the shower; (f) the bedrooms were cluttered with clothing, toys and other articles; (g) the kitchen floor was black with dirt; (h) M.B.McC., who was approximately 7 years of age, had a terrible odor, was unclean, and his clothes were dirty; and (i) Petitioner made M.B.McC. wear wet clothes to teach him not to wet his clothes. Abuse Report numbered 1999-122259 is not a confirmed report.

4. There are 6 children, ranging in age from 8 months to 14 years, 8 months, living with Petitioner in her home. There is no father living in the home.

5. On September 26, 1999, Noberta Tijerina, Child Protective Investigator (CPI), visited Petitioner's home and found the home to be relatively clean, although she detected a faint odor of urine. The CPI also observed some clothes scattered on the floor of the bedroom but Petitioner explained that she was in the process of cleaning and preparing to buy a bedroom suite which she did. The CPI only observed 2 of the foster children that day and both were clean.

6. The CPI spoke with Petitioner again on November 18, 1999, to get information as to where the children were attending school or daycare. Subsequently, the CPI interviewed M.B.McC. at the daycare. The child stated that he took a bath at night, sometimes wet his pants at school but did not have change of clothes, and sometimes got a "whooping" by

Petitioner or her father with a belt but never had bruises. Both Petitioner and Petitioner's father denied ever whipping the child. The child also told the CPI that he went to bed at the same time as the other children, took medication, and got sleepy at school. Neither M.B.McC nor any of the other children testified at the hearing. In observing the child, the CPI did not detect any body odor and did not find the child to be dirty. In visiting with the staff at both the daycare and school, the CPI was informed that the child wet his clothes at school but did not have clean changing of clothes even though the staff had requested Petitioner to send a clean changing of clothes with the child. None of the daycare or school staff were identified and did not testify at the hearing.

7. Subsequent to the her visit with the daycare and school staff, the CPI made another home visit to Petitioner's home. The CPI found the home to be clean and the remodeling completed. The CPI was advised that the child's medication had been reduced in an attempt to prevent him from falling asleep in school.

8. Although M.B.McC. wet his clothes occasionally, there is insufficient evidence to show that the child had a "wetting" problem which required Petitioner to send a clean change of clothes daily with the child to the daycare or to the school. Likewise, there is insufficient evidence to show that either the daycare staff or school staff had made a "standing request" of Petitioner to send a clean change of clothes for the child daily.

Petitioner testified that when requested of the staff to send a clean change of clothes for the child she did so without hesitation. I find Petitioner's testimony to be credible, notwithstanding the hearsay testimony of the CPI which is unsupported by any other evidence. Likewise, there is insufficient evidence to show that Petitioner required the child to remain in wet clothing to teach him not to wet his clothes, notwithstanding the hearsay testimony of the CPI to the contrary which I find is unsupported by the evidence.

9. There is insufficient evidence to show that either Petitioner or Petitioner's father ever subjected M.B.McC., or any of the children residing in Petitioner's home, to corporal punishment, notwithstanding the hearsay testimony by the CPI concerning M.B.McC's statement to the contrary which I find is also unsupported by the evidence.

CONCLUSIONS OF LAW

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

11. The burden of proof is on the party asserting the affirmative of an issue before an administrative tribunal, Florida Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981). This proceeding involves the revocation of Petitioner's foster home license. Normally, license revocation proceedings are considered penal in nature and

implicate significant property rights. Therefore, the extension of the clear and convincing evidence standard is warranted.

Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern Company, 670 So. 2d 932 and Section 120.57(1)(h), Florida Statutes. However, a foster home license is not considered a professional license and does not create any significant property rights in the recipient.

Therefore, the clear and convincing evidence standard is not warranted in a revocation proceeding involving a foster home license. Osborne Stern, supra, 934, 935, and Section

409.175(2)(f), Florida Statutes. Therefore, to meet its burden, the Department must establish facts upon which its allegations are based by a preponderance of the evidence. Osborne Stern,

supra, 934, 935, and Section 120.57(1)(h), Florida Statutes. The Department argues that the "holders of foster home licenses are entitled to an administrative review of the Department's adverse licensing action and the Department's decision must not be arbitrary or capricious and that the Department must submit 'some evidence' to the administrative tribunal to support the

revocation of a foster home license." The Department fails to recognize that this is a de novo proceeding and not an appellant review. See Wise v. Department of Children and Families, 19 FALR

3341 (Final Order entered January 31, 1997, adopting

Administrative Law Judge J. Lawrence Johnston's discussion of this issue.)

12. Rules 65C-13.010, (1)(b)1.a., 3.a., and 5.a.e. and f., Florida Administrative Code, provide as follows:

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

* * *

(b) Family Care Activities.

1. Daily living tasks

a. The substitute care parent 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.

* * *

5. Discipline.

a. The substitute care parents must discipline children with kindness, consistency, and understanding, and with the purpose of helping the child develop responsibility with self-control.

* * *

e. The substitute care parents must not subject children to cruel, severe, humiliating or unusual punishment, for example, to use soap to wash out the mouth, eating hot sauces or pepper, placing in hot water, kneeling on stones, etc.

f. The substitute care parents must not use corporal punishment of any kind.

13. The Department has alleged that Petitioner's violation of the above rule is a violation of Section 409.175(8)(b)1., Florida Statutes. Sections 409.175(8)(a), and (b)(1) and (2), Florida Statutes, provide 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 grounds 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.

14. Other than testimony of the CPI of what she observed at the first and second home visits with Petitioner, which is insufficient to prove the Department's allegations, the CPI's testimony is hearsay and is unsupported by any other credible evidence. The Department has failed to meet its burden to show by a preponderance of the evidence or any lesser evidence standard that Petitioner violated the rules and statutes as set out in the letter of revocation and thereby not suitable for licensure as a foster parent.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is recommended that the Department enter a final order dismissing the allegations against Petitioner set out in the Department's letter of revocation dated March 6, 2000, and reinstate Petitioner's foster home license.

DONE AND ENTERED this 30th of November, 2000, 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 30th day of November, 2000.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit 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.