

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MARY LYLES,)
)
 Petitioner,)
)
 vs.) Case No. 00-2961
)
 DEPARTMENT OF CHILDREN AND)
 FAMILY SERVICES,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, this cause was heard by Linda M. Rigot, the assigned Administrative Law Judge of the Division of Administrative Hearings, on November 14, 2000, in Miami, Florida.

APPEARANCES

For Petitioner: Mary Lyles, pro se
14501 Polk Street
Miami, Florida 33176

For Respondent: Rosemarie Rinaldi, Esquire
Department of Children and Family Services
401 Northwest Second Avenue, N-10-14
Miami, Florida 33128

STATEMENT OF THE ISSUE

The issue presented is whether Petitioner's foster care license should be renewed.

PRELIMINARY STATEMENT

By correspondence dated May 5, 2000, the Department issued its Notice of Intent to Deny Foster Home License Renewal, and Petitioner timely requested an evidentiary hearing regarding the Department's intended action. This cause was thereafter transferred to the Division of Administrative Hearings to conduct the evidentiary proceeding.

Petitioner testified on her own behalf and presented the testimony of Daryl A. Lyles, Ann Dericho, and Barbara Brown. The Department presented the testimony of Mavis Whitton, Nayive Bolivar, and Sonia A. Martinez. Additionally, Petitioner's Exhibits numbered 1-8 and the Department's Exhibits numbered 1-3 were admitted in evidence.

Both parties submitted proposed recommended orders after the conclusion of the final hearing. Those documents have been considered in the entry of this Recommended Order.

FINDINGS OF FACT

1. At all times material hereto, Petitioner was licensed by the Department to provide foster care for one child in the age group of 6 to 10. During the months of November and December, 1999, however, the Department had three infants and one toddler in Petitioner's care at Petitioner's small home.

2. The youngest child placed in Petitioner's home by the Department was Domenica. When she was placed there, the

Department did not tell Petitioner that Domenica had immune deficiency disease.

3. On October 16, 1999, Petitioner's landlord began renovating the house. Over time, the central air conditioning system was replaced. When the workmen were on the roof making repairs, one of the workers stepped through a spot where the wood underneath was rotten, creating a hole in the kitchen ceiling. Wood around doorjambes unexpectedly needed replacement.

4. As a tenant, Petitioner had no control over the speed with which the renovations to the house were accomplished. While the work was underway, the new kitchen appliances were stored in Petitioner's living/dining area. Although the house had three bedrooms, it was a small house. The extra appliances made the living/dining area very cluttered.

5. The replacement bathtub and toilets were placed in the yard until they could be installed. At some points construction debris also lay in the yard until it could be removed. The only other items in the yard were a barbecue made from trashcans and several trash bags full of beer cans and soda cans that Petitioner collected when she went walking and later sold for extra money to spend on the children.

6. During the morning of November 7, 1999, Petitioner took Domenica to a clinic where the doctor directed Petitioner to take her to the hospital. The child was very sick and was

admitted to the hospital. While she was at the hospital with the infant, Petitioner's mother passed away.

7. The following day a Department employee made an unannounced visit to Petitioner's home. That employee noted that the yard was cluttered and the house was cluttered and dirty. She told Petitioner to clean her house, which Petitioner did.

8. While attending her mother's funeral, Petitioner learned that one of her sons had terminal cancer. That son came to stay at Petitioner's home the Friday before Thanksgiving and was there through the end of December, except for several hospital admissions during that time period.

9. On December 27, 1999, three Department employees went to Petitioner's house for an unannounced site visit. The two who testified at the final hearing thought it noteworthy that Petitioner made them wait while she searched for her keys before admitting them. They also testified that a dog in the front yard had fleas. The dog was not Petitioner's.

10. When Petitioner admitted the three employees, she had just finished taking down the Christmas tree and was in the process of cleaning the living/dining area. She held a large trash bag in her hand and continued putting the wrappings and boxes from gifts into the trash bag.

11. The Department employees looked at tar from the roof that had been tracked onto the carpet and determined that it was dog feces. They noted that the house was very small and cluttered and saw the hole in the ceiling in the kitchen. They determined that the house was not safe for children. They saw the bathroom fixtures and the beer cans and soda cans in the yard and determined that the yard was not safe for the children to play outside. No consideration was given to the fact that the house was undergoing renovations or the fact that it would be unusual for anyone to have infants playing in a yard.

12. Although the employees concluded that Petitioner's home constituted an "unsanitary" condition, they did note that the bedroom and bathroom used for the children were clean, that the sheets in the cribs were clean, and that the children's clothes were clean and neatly folded.

13. Petitioner had placed one of the infants in a child seat in the living area so she could watch him while she was cleaning the house. One of the Department employees unreasonably feared that Petitioner could not get to the child quickly enough if there were a problem, due to the clutter.

14. The child in the dining/living area was the only one at home when the Department's employees were there. Petitioner's sister had taken the other children to her home so that Petitioner could clean the house after Christmas.

15. Petitioner's sister was her Departmentally-approved back-up, i.e., someone approved to care for the children if Petitioner were unable. Petitioner did not know that since her sister had just recently closed her own foster home, which had been licensed by the Department, her sister was no longer permitted to have Petitioner's foster children in her home but could only look after them in Petitioner's home.

16. The Department employees went to Petitioner's sister's home and determined that the children were safe. They summoned other Department employees to remove the children from the care of both Petitioner and Petitioner's sister.

17. A Department caseworker visited Petitioner's home on August 11, 1999; October 20, 1999; and November 17, 1999. That employee filed with the Department reports verifying that the condition of the home was acceptable; that the environment was safe for the children; that the children were healthy and well fed; that there were no signs of neglect or abuse; and that the children were appropriately placed in Petitioner's home. The forms completed by that caseworker contain an acknowledgement that the forms were accurately and truthfully completed under penalty of termination of employment.

18. Petitioner now lives in her mother's home, which is much larger than the house she was renting.

CONCLUSIONS OF LAW

19. The Division of Administrative Hearings has jurisdiction over the parties hereto and the subject matter hereof. Sections 120.569 and 120.57(1), Florida Statutes.

20. Section 409.175(4)(a), Florida Statutes, authorizes the Department to adopt licensing rules for foster homes, and the Department has adopted Rule 65C-13.010, Florida Administrative Code. Sections (11), (12), and (13) of that Rule require that foster homes be free from conditions which constitute a danger to children, have a safe outdoor play area, have sufficient space, and be clean and free of hazards to the health and well-being of the family.

21. There is no evidence that any condition existed in Petitioner's home that constituted a danger to children. There is no evidence that temporary clutter due to Christmas decorations or renovations or repair work per se constitute a danger to children. There is no evidence that the babies and the toddler the Department placed in Petitioner's care were in danger at any time. Similarly, there is no evidence that the bathroom fixtures or bags of cans to be re-cycled which were located in Petitioner's back yard constituted an unsafe condition for the babies in Petitioner's care or even that the babies and the toddler had access to the back yard.

22. To the extent that Petitioner's home was crowded or cluttered, there is no evidence that the temporary situation created a hazard to the health and physical well-being of the family, including the foster children placed there by the Department. Rather, the record in this cause reflects that the bedroom and bathroom used for the children were clean and their clothing and bed sheets were folded and clean.

23. It is difficult to understand how the Department could place three babies and a toddler in Petitioner's care when she was licensed to care for only one child aged six through ten and then complain that the house was crowded. It is easier to understand how the caseworker who monitored conditions at Petitioner's home once a month would have a better understanding of circumstances than the Department's employees who appeared at Petitioner's home one time, resulting in the allegations that Petitioner failed to meet minimum standards.

24. Petitioner has presented a preponderance of evidence showing that the children were safe and well cared for, and the Department has failed to prove its allegations that Petitioner failed to meet or maintain minimum standards.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be entered granting
Petitioner's request to renew her foster home license.

DONE AND ENTERED this 8th day of January, 2001, in
Tallahassee, Leon County, Florida.

LINDA M. RIGOT
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 8th day of January, 2001.

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.