

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEQUINDA COOK,)
)
 Petitioner,)
)
 vs.) Case No. 00-4789
)
 DEPARTMENT OF CHILDREN AND)
 FAMILY SERVICES,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings by its designated Administrative Law Judge, Ella Jane P. Davis, held a disputed-fact hearing in the above-styled case on January 18, 2001, in Ocala, Florida.

APPEARANCES

For Petitioner: Dequinda Cook, pro se
9311 Spring Road
Ocala, Florida 34472

For Respondent: Nancy Peck
District 13, Assistant Legal Counsel
Department of Children and Family Services
1601 West Gulf Atlantic Highway
Wildwood, Florida 34785-8158

STATEMENT OF THE ISSUE

Whether Petitioner is entitled to a foster care license upon satisfactory evidence of financial ability to provide care for children placed in her home.

PRELIMINARY STATEMENT

By a letter dated September 25, 2000, the Department of Children and Family Services (Department) advised Petitioner, a first-time applicant, that her application for a foster home license, pursuant to Section 409.175, Florida Statutes, was denied due to her failure to meet the requirements of Rule 65C-13.001(4)(d), Florida Administrative Code.

On or about November 11, 2000, Petitioner's request for a disputed-fact hearing was referred to the Division of Administrative Hearings.

The parties did not comply with the Order of Prehearing Instructions issued December 19, 2000, so at the commencement of the disputed-fact hearing on January 18, 2001, the undersigned inquired as to the parameters of the issues to be tried. The parties orally stipulated that the only issue to be tried was whether or not Petitioner could demonstrate financial ability to provide care for children placed in the home as stated in the September 25, 2000, denial letter;¹ that Petitioner qualified in all other respects; and that Petitioner need not prove-up any further elements of eligibility by statute or rule.²

Petitioner testified on her own behalf and had eight exhibits admitted in evidence.

Respondent Department presented the oral testimony of Diana Vazquez and Mary Mills, and had one exhibit admitted in evidence.

No transcript was provided. Respondent filed its Proposed Recommended Order on February 2, 2001, within the 15 days stipulated.

Due to an error in the office of the undersigned, a post-hearing order was not entered until February 6, 2001. Even so, Petitioner has, to date, filed no proposed recommended order.

FINDINGS OF FACT

1. Petitioner took the required courses through the Department and applied for a foster home license.
2. She passed all home visits with flying colors and was recommended for licensure.
3. Her application contained a family financial statement which reflected her monthly income as \$660.00 and her estimated monthly liabilities (expenditures) as \$625.62.
4. The Department calculated Petitioner's residual income as \$34.38 by deducting her usual expenses from her usual income.
5. Because substitute care parents must have sufficient income to assure the stability and security of their own family without relying on foster care payments and must have sufficient income to cover four to six weeks of a foster child's care

during anticipated lag time in receiving foster care payments, Petitioner's application was denied.

6. The \$660.00 Petitioner declared in her financial statement is made up of \$460.00 monthly social security income plus \$200.00 from unenumerated sources. Petitioner is not employed outside the home.

7. Petitioner testified credibly that, as of the date of hearing on January 18, 2001, she had nearly \$15,000.00 saved in her bank account, mostly as the proceeds of the "Black Farmers Settlement" of a class action lawsuit.

8. In support of her testimony, Petitioner also had admitted in evidence an undated letter addressed to her, showing transmittal to her of a check for \$50,000.00 "cash award," in the cases of Pigford et al. v. Glickman, and Brewington et al. v. Glickman.

9. Petitioner also had admitted in evidence an AmSouth "Official Check," dated January 3, 2001, made out to her in the amount of \$14,928.88. This appears to be a certified cashier's check she asked for in order to demonstrate her bank balance for the hearing.

10. Petitioner further testified that she had made a deposit to her checking account. She had admitted in evidence an AmSouth customer receipt (deposit slip) showing an AmSouth account balance of \$59.85 to which a \$3,000.00 check had been

deposited on November 1, 2000. The numbers on this item did not match those on her check cashing card or her voided check, which items were also admitted in evidence. However, there is no reason to believe the numbers would match, considering modern automatic banking safeguards. What, precisely, this receipt was intended to demonstrate is unclear.

11. Much of Petitioner's \$50,000.00 settlement monies went to pay for hip replacement surgery, and she is fully recovered.

12. Prior to making her application and while she was still in training, that is, prior to November 29, 1999, the Department allowed Petitioner to take in some foster children on an emergency basis. The understanding at that time was that Petitioner would bear all the children's expenses with no reimbursement by any government program except for their medical aid. During this period, Petitioner frequently complained that she had no money to put gas in her car to bring a certain child or children to the Department office for their medical care or to see their case workers. As near as can be determined from this record, these events occurred in the fall of 1999 or early in the year 2000, but without information as to when Petitioner received her lump-sum class action settlement, it is impossible to assess whether these events occurred before or after Petitioner received her class action settlement.

13. Petitioner's Lease for Voucher Tenancy, Section 8, Tenant-Based Assistance Rental Voucher Program, signed April 7, 2000, stated that she lives in the home with four other individuals: Irene Turner, Lionel Cook, Iman McCullough, and Christina Honeycutt. However, a June 26, 2000, Home Study Report concluded, based on visits in April and May 2000, that Petitioner lives alone. Iman McCullough, a foster child, lived in Petitioner's home for a short period in 1999, but by September 2000, she was living in another foster home. Christina Honeycutt, also a foster child, lived in Petitioner's home only briefly in 1999. Another individual listed on the April 7, 2000, lease as a resident of the home is Lionel Cook, one of Petitioner's sons. However, the June 26, 2000, Home Study Report stated that Petitioner did not know her sons' addresses or phone numbers and that she had stated she has no contact with them. The Petitioner's Section 8 rent is \$30.00 per month, calculated on five residents in the home. It is conceivable that a change in the number of people in the home may alter the amount paid for rent.

14. There was no evidence presented concerning how much per child Petitioner would receive if her application were granted. Petitioner testified that she hoped to have four children assigned to her. The June 26, 2000, Home Study Report recommended that she receive five children.

CONCLUSIONS OF LAW

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

16. Section 409.175(1)(f), Florida Statutes, provides:

"License" means "license" as defined in Section 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.

17. Section 409.175(8)(a), Florida Statutes, provides:

The department may deny, suspend, or revoke a license.

18. Rule 65C-13.001(5), Florida Administrative Code, provides:

Substitute care parents must have sufficient income to assure their stability and the security of their own family without relying on board payments. The substitute family must have sufficient income to absorb four to six weeks of a foster child's care until a board payment is received.

19. This is a de novo proceeding in which Petitioner bears the duty to go forward and prove her entitlement to licensure by a preponderance of the evidence. Florida Department of

Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981), and McDonald v. Banking and Finance, 346 So. 2d 569 (Fla. 1st DCA 1977).

20. Respondent asserts that because Rule 65C-13.001(5), Florida Administrative Code, speaks to "income" instead of "lump sum savings," Petitioner should not prevail. No legal precedent was offered whereby the rule can be read so narrowly. The purpose of the rule is to ensure the emotional and financial equilibrium of the foster parent's own family and of the assigned foster children, and savings which draw interest should not be excluded from consideration.

21. However, on the same theory, there should have been some evidence to show how slowly or how fast Petitioner's \$50,000.00 settlement dwindled to \$14,928.88, but there is none.

22. Likewise, there is insufficient evidence upon which one can calculate what would render Petitioner's proposed home financially stable, such as: how many children will be housed with Petitioner; how much will it cost Petitioner to care for them for four to six weeks while awaiting board payments; and how much would Petitioner be out-of-pocket if the governmental stipend is not paid in that length of time? Here, absolutely no evidence permits such calculations to even begin.³

23. Also, the anecdotal evidence concerning Petitioner's problems with supporting children who were temporarily entrusted

to her care and the discrepancies between the lease and the home study information undermines her credibility on the material issues.

24. Accordingly, Petitioner has not proven her eligibility by a preponderance of the evidence.

RECOMMENDATION

Based upon the findings of fact and conclusions of law, it is

RECOMMENDED:

That the Department of Children and Family Services enter a Final Order denying Petitioner's application for a foster home license at this time and without prejudice to reapply.

DONE AND ENTERED this 1st day of March, 2001, in Tallahassee, Leon County, Florida.

ELLA JANE P. DAVIS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 1st day of March, 2001.

ENDNOTES

^{1/} The only reason for denial given in the September 25, 2000 letter was:

Florida Administrative Code Chapter 65C-13.001(4)(d), states that substitute care parents must have sufficient income to assure their stability and security of their own family without [sic] relying on board payments. The substitute family must have sufficient income to absorb four to six weeks of a foster child's care until board payment is received. Your income after liabilities of \$34.38 does not appear sufficient to absorb the financial impact of children placed in the home. Therefore, your application for licensure is being denied.

^{2/} Only after Petitioner had presented her case-in-chief, did Respondent, in its case-in-chief, offer testimony of a hearsay nature concerning Petitioner's alleged use of drugs. This information was purportedly discovered after the September 25, 2000, letter. The denial letter was never amended to include such a reason. The issue was not raised when the undersigned asked for a stipulation as to the issues at the commencement of hearing. Due to Respondent's stipulation at the commencement of hearing to exclude all issues not referenced in the denial letter, Respondent was not permitted to present evidence concerning Petitioner's alleged use of drugs.

^{3/} For instance, \$15,000.00 does not go very far if Petitioner has to expend \$700.00 per child per month for four children and reimbursement of \$700.00 per child per month is in arrears by six weeks. Petitioner would be out-of-pocket \$4,200.00 at any given time.

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.