

6-25-03

Stephen Dean

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILY SERVICES

FILED

SEP -3 AM 10:22

CYNTHIA MOORE FAMILY DAY CARE HOME,

AP

DIVISION OF ADMINISTRATIVE HEARINGS

Petitioner,

CASE NO. 02-3760 SFD-CWS
RENDITION NO. DCF-03-822-FO

v.

DEPARTMENT OF CHILDREN AND FAMILY SERVICES,

FILED

SEP 02 2003

DCF Department Clerk

Respondent.

FINAL ORDER ADOPTING RECOMMENDED ORDER

THIS CAUSE is before me upon the attached recommended order that was issued by an Administrative Law Judge (ALJ) assigned to hear the case by the Division of Administrative Hearings. Transcript of the hearing was not filed. No exceptions to the Recommended Order were filed. The ALJ's Recommended Order (RO) recommends that the department enter a Final Order granting the Petitioner's application for registration to operate a family day care home.

1. All findings of fact in the RO are accepted, adopted and incorporated herein by reference, unless otherwise rejected as irrelevant or immaterial.

2. The conclusion of law contained in paragraph 11 is accepted, adopted and incorporated herein by reference.

3. The conclusion of law contained in paragraph 12 is rejected and replaced as follows. The Department regulates three types of day care facilities, they are a

licensed child care facility, a licensed family child care home, and a registered family day care home. See sections 402.305 and 402.313, Florida Statutes. By stipulation, this case involves the application for registration of a family day care facility. (See "Statement of Issue" in RO, p.1)

4. The conclusion of law contained in paragraph 13 is rejected as irrelevant to the issue before the Division of Administrative Hearings in this case.

5. The first sentence of the conclusion of law contained in paragraph 14 is rejected as irrelevant and/or immaterial to the issue before the Division of Administrative Hearings in this case. The second sentence in this paragraph indicates that none of the provisions of sections 402.301 through 402.319 address the leaving of an infant with an unsupervised teenager or failing to properly supervise a child in one's care. This is a misinterpretation of the law and is hereby rejected and replaced as follows: Section 402.301, Florida Statutes defines "child care" as the care, protection, and supervision of a child. In pertinent part, a family day care home is "an occupied residence in which child care is regularly provided..." Failure by an owner or operator of a family day care home to supervise a child in their care, violates the very definition of "child care" and is a violation of the provisions of sections 402.301 through 402.319, F.S. I find this conclusion of law is as or more reasonable than the conclusion of law hereby being rejected.

6. The conclusion of law contained in paragraph 15 is technically correct. However, the allegations are that the petitioner left her teenage child unsupervised with an infant in the Petitioner's care. Thus, during the time the Petitioner was away from

her home, the teenager would not have been under her direct supervision. As provided by section 402.313(1)(a)4., F.S., the Petitioner was required to have an "adult substitute operator" available for emergencies, as a requirement of being a registered family day care home, which she apparently failed to do.

7. The conclusions of law contained in paragraph 16 and 17, are accepted, adopted and incorporated herein by reference.

8. The conclusions of law contained in paragraphs 18 are rejected as irrelevant and immaterial to the matter referred to the Division of Administrative Hearings, for review. (See "Statement of Issue" in RO, p.1)

9. The conclusions of law contained in paragraph 19 are accepted, adopted and incorporated herein by reference.

10. The first sentence in paragraph 20 is dicta, but is nevertheless accepted, adopted and incorporated herein. The second and third sentences of this paragraph are also dicta and are rejected for the reasons stated in paragraph 6, *infra*. The last sentence of this paragraph is a finding of fact and as such, is accepted, adopted and incorporated herein by reference.

11. No exceptions, nor the transcript of the hearing, were filed with the Agency Clerk. Section 120.57(1)(l), provides that "[t]he agency may accept the recommended penalty in a recommended order, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefor in the order, by citing to the record in justifying the action."

12. Because of the violations as established in this proceeding, it is strongly emphasized that the Petitioner must comply with all the requirements of section 402.313(1)(a)1-7, F.S., or face permanent revocation of her registration.

And the undersigned being fully advised, it is therefore, **ORDERED** that the Petitioner's application for registration to operate a family day care home is **GRANTED**.

DONE and ORDERED this 28 day of August, 2003, in Tallahassee, Leon County, Florida.



CELESTE PUTNAM
Deputy Secretary for Behavioral Services
Department of Children and Family Services

Copies of this Final Order are being furnished to:

Stephen F. Dean
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

Cynthia Moore, pro se
Cynthia Moore Family Care Home
1222 Essex Road
Daytona Beach, Florida 32117

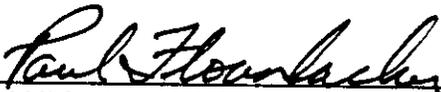
George P. Beckwith, Jr., Esquire
Department of Children and Families
210 North Palmetto Avenue, Suite 412
Daytona Beach, Florida 32114-3269

NOTICE OF RIGHT TO APPEAL

A party who is adversely affected by this final order is entitled to judicial review. To initiate judicial review, the party seeking it must file one copy of a "Notice of Appeal" with the Agency Clerk. The party seeking judicial review must also file another copy of the "Notice of Appeal," accompanied by the filing fee required by law, with the First District Court of Appeal in Tallahassee, Florida, or with the District Court of Appeal in the district where the party resides. The Notices must be filed within thirty (30) days of the rendition of this final order.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and copy of the foregoing FINAL ORDER has been sent by U.S. Mail or by hand delivery to each of the persons named above on this 2^d day of September, 2003.



PAULFLOUNLACKER, Acting Agency Clerk
Department of Children and Family Services
1317 Winewood Blvd. Bldg. 2 Room 204Z
Tallahassee, FL 32399-0700