

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CYNTHIA MOORE FAMILY DAY CARE)
HOME,)
)
 Petitioner,)
)
vs.) Case No. 02-3760
)
DEPARTMENT OF CHILDREN AND)
FAMILY SERVICES,)
)
 Respondent.)
_____)

RECOMMENDED ORDER

A hearing was held pursuant to notice, on April 25, 2003,
by Stephen F. Dean, assigned Administrative Law Judge of the
Division of Administrative Hearings, in Daytona Beach, Florida.

APPEARANCES

For Petitioner: Cynthia Moore, pro se
Cynthia Moore Family Day Care Home
1222 Essex Road
Daytona Beach, Florida 32117

For Respondent: George P. Beckwith, Jr., Esquire
Department of Children
and Family Services
210 North Palmetto Avenue, Suite 412
Daytona Beach, Florida 32114-3269

STATEMENT OF THE ISSUE

By stipulation of the parties, the issue to be decided is
whether the Petitioner's application for registration of a
family day care facility should be approved.

PRELIMINARY STATEMENT

The factual predicate for this case is complicated by the series of revocations of the Petitioner's registration and applications for registration filed by the Petitioner. After the hearing was underway, it was stipulated that the evidence adduced at the hearing would be considered in relationship to the application for registration which the Petitioner had filed in the Fall of 2002.

As it relates to that application, the Department of Children and Family Services (Department) seeks to deny the application on the basis of the prior conduct of the Petitioner which includes permitting her teenage son to care for an infant while the Petitioner delivered papers in June 2002, operating without a license in December 2002, and failing to properly supervise a child in her care in December 2002.

The testimony of the Department's employees, Dianna Vece, Rick Holdman, and "Skeeter" Surguine was presented by the Department which introduced Department's Exhibit 1 (Composite), containing the letter and reports pertaining to the Petitioner's file. The Petitioner testified in her own behalf. A transcript was not filed.

After the hearing, the Department filed a Proposed Recommended Order on May 5, 2003, which was read and considered.

The Petitioner filed a letter outlining the facts to which she had testified in support of her application for registration. Her letter was read and considered.

FINDINGS OF FACT

1. The Petitioner operated a family day care home (FDCH) for three years prior to the application in question. Prior to that, she had cared for children at her church; and prior to the incidents discussed below, the Petitioner had had no problems of record in the operation of her FDCH.

2. In June 2002, the Petitioner was owner and operator of a FDCH located at 1222 Essex Road, Daytona Beach, Volusia County, Florida. In June 2002, Diana Vece received a report from an employee of the federally funded program that the employee had visited the FDCH to check attendance and found the Petitioner's teenage son alone at the facility. The employee called Vece, who called the police and proceeded to the FDCH. The Petitioner, Vece, and the police arrived at the home at virtually the same time. The Petitioner had the day care children with her in her car when she arrived. Vece asked for access to the home, and Moore let her in, entering with her and the children.

3. Upon entering, Vece observed the Petitioner's teenage son looking after the Petitioner's own children and an infant. The name and status of the infant was not established. Vece

proceeded to conduct a spot inspection of the FDCH which revealed that five of the children being cared for did not have current immunizations.

4. Vece checked with her supervisor, "Skeeter" Surguine, regarding the situation, and they closed the FDCH.

5. The Department informed the Petitioner by letter in July 2002 that she must cease and desist operation of her FDCH immediately. The Petitioner voluntarily ceased operations as a result of the letter and in August or September 2002, reapplied to reopen her FDCH. It appears that the Department denied this application and the Petitioner requested an informal hearing. After the informal hearing, the Department determined that it had insufficient basis to deny the application and approved the application in December, retroactive to November 25, 2002.

6. The Petitioner explained that her required back-up person was being inspected for licensure of her own facility on the day when her teenager was left to attend the sleeping infant.

7. On December 3, 2002, the Petitioner had car trouble and asked one of the parents of a child, whom she cared for, to use her car. The parent came to the FDCH, the Petitioner placed all the children in the car, and the parent drove them to the parent's home where the Petitioner got out of the passenger's seat and walked around the car to the driver's seat and drove

her children to their school. The parent got out of the car and walked into the house followed by one of the children for whom the Petitioner was caring.

8. The parent became immediately aware of the child and took care of the child with whom the parent was acquainted; however, the parent was unable to contact the Petitioner to let her know about the child because she did not know to which school the Petitioner was going.

9. The Petitioner went to her child's school and got out of the car. When she got ready to leave, she counted noses and realized she was short one child. She looked around the school and sought the help of an off-duty police officer who worked at the school to search for the child. When they were unable to find the child, the police officer put in a report. Shortly afterward, they checked with the parent and discovered she had the child.

10. It is unclear what, if any, action was taken against the Petitioner's registration; however, it is stipulated that this hearing is to be treated as an application case and that the grounds for denial of the license are the incident in June 2002 and the incident in December 2002.

CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the parties and subject matter in this case.

12. The Department has cited no law for its authority to license or deny licensure of FDCHs. A search of Chapter 402, Florida Statutes, which was referenced at the hearing reveals several applicable provisions. The definition of child care facilities applies to facilities taking care of five or more children without regard to age. The definition of FDCH includes facilities taking care of between four children and ten children, dependent upon age. It appears that the licensing requirement for FDCHs differ subtly from those of child care facilities.

13. Specifically, Section 402.313, Florida Statutes, provides that FDCHs shall be licensed under this act if they are participating in the subsidized child care program. In this case, evidence was presented collaterally that the Petitioner was participating in such a program. She is, therefore, subject to licensure.

14. Section 402.310, Florida Statutes, provides in pertinent part that the Department may deny licensure for the violation of any provision of Sections 402.301 to 402.319, Florida Statutes. However none of the cited provisions address the leaving of an infant with a teenage son or failing to properly supervise a child in one's care. The Department has cited no rules implementing the statutes which might provide further guidance.

15. Contrary to the representations made at the hearing, the minimum age for child care personnel is 16 years of age and not 18 years of age. See Section 402.305(2)(c), Florida Statutes, which states, ". . . minimum standards shall prohibit a person . . . under the age of 16 from being employed at such facility unless such person is under direct supervision and is not counted for the purposes of computing the personnel-to-child ratio." The age of the teenager was not developed during the hearing.

16. There are provisions regarding the transport of children; however, these were specifically mentioned as not being the principal concerns of Vece, although the absence of child restraints and car seats was mentioned in the letter of revocation, which followed the June 2002 incident.

17. FDCHs are required to maintain immunization records to prove that immunizations are current.

18. Contrary to the allegations, the Petitioner was licensed at the time of the December 2002 incident.

19. Section 402.310(1)(b)1., Florida Statutes, provides in pertinent part that the severity of the violation, including the probability that death or serious harm to the health or safety of any person will result from the violation, should be considered in determining the severity of the action.

20. While nothing happened to the child who followed the parent into her house, in other circumstances this could have been tragic. The June 2002 is of minor impact in considering the issue of the Petitioner's licensing. The age of the Petitioner's son was not established, and he may have been old enough to watch the child, whose status was also not established. Both incidents arose out of car trouble issues, and the Petitioner testified that she had purchased a new vehicle and child seats.

21. Considering the time that the Petitioner has been precluded from participating in this program and considering her previously good record, the Petitioner's license should be approved; but she should be monitored closely for the first six months of operation.

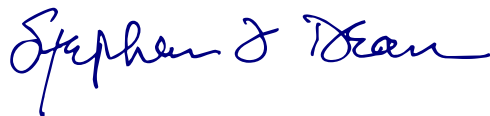
RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law set forth herein, it is

RECOMMENDED:

That the Department of Children and Family Services enter a final order approving the Petitioner's application.

DONE AND ENTERED this 25th day of June, 2003, in
Tallahassee, Leon County, Florida.



STEPHEN F. DEAN
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 25th day of June, 2003.

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.