

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ANTOINETTE SCANZIANI,)
)
 Petitioner,)
)
 vs.) Case No. 06-3696
)
 DEPARTMENT OF CHILDREN AND)
 FAMILY SERVICES,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

A final hearing was conducted in this case before Daniel M. Kilbride, Administrative Law Judge of the Division of Administrative Hearings (DOAH) on January 8, 2007, by video-teleconference from sites in Tallahassee and Orlando, Florida.

APPEARANCES

For Petitioner: Antoinette Scanziani, pro se
7710 Lakeside Woods Drive
Orlando, Florida 32810

For Respondent: Richard Cato, Esquire
Department of Children and
Family Services
400 West Robinson Street, Suite S-1106
Orlando, Florida 32801-1782

STATEMENT OF THE ISSUE

Whether Petitioner Antoinette Scanziani's license as a family foster home should be renewed.

PRELIMINARY STATEMENT

By certified letter, dated August 28, 2006, Respondent, Department of Children and Family Services, informed Petitioner, Antoinette Scanziani, that her application for relicensure as a family foster home was being denied. Petitioner disputed the facts underlying Respondent's decision and on September 19, 2006, by letter, timely requested an administrative hearing. On September 27, 2007, Respondent referred the matter to DOAH for the assignment of an Administrative Law Judge to conduct the hearing requested by Petitioner.

Following discovery, a continuance was granted at the request of Petitioner, and the case was transferred to the undersigned. The final hearing was scheduled for and held on January 8, 2007. At the hearing, official recognition was taken of Section 409.175, Florida Statutes (2004), and Florida Administrative Code Chapter 65C-13.

At the hearing, Respondent presented the testimony of Norlyn M. Florence, Dependency Specialist with the Children's Home Society; Emmy A. Sims, Dependency Case Manager Supervisor with the Children's Home Society; Tracy Klinkbeil, Government Analyst, with the Department of Children and Family Services and former licensing specialist with Respondent's Central Licensing Zone; and Amy D. Hammett, Lead Licensing Specialist for Respondent's Central Licensing Zone, and offered one composite

exhibit which was admitted into evidence. Petitioner testified on her own behalf, presented the testimony of her son, Emanuel Scanziani, and offered 16 exhibits, which were admitted into evidence.

The hearing was recorded, and the Transcript was filed with DOAH on February 21, 2007. Proposed Recommended Orders were to be submitted within 15 days of the filing of the transcript. Petitioner filed a three page letter as her post-hearing submittal, which has been considered. However, Respondent has not file a proposed recommended order as of the date of this Recommended Order.

FINDINGS OF FACT

Based on the testimony and evidence received at the hearing, the following findings are made:

1. Respondent is the state agency responsible for licensing and regulating family foster homes. Children's Home Society (CHS) is the contract agency in the Central Licensing Zone that directly supervises licenses in that area.

2. Petitioner filed an application to renew her family foster home license on May 26, 2006, which was originally issued for one year in August 2005.

3. Prior to the issuance of her family foster care license on August 19, 2005, Petitioner had completed, inter allia, 30 hours of Models Approach Partnership and Parenting (MAPP)

training and signed a Foster Parent Agreement, prepared by CHS, which spells out the duties and obligations of a foster parent.

4. Paragraph 12 of the Agreement specifically states that a foster parent will notify CHS immediately of any change of address. Under Respondent's rules, a family foster care license is not transferable, and a new sanitation inspection and recommendation must be completed before Respondent can issue a new license for the new address.

5. The family foster care license was issued to Petitioner for 5831 Bent Pine Drive, Apartment 300, Orlando, Florida 32822. The first foster child was placed in Petitioner's care on September 1, 2005.

6. In August 2005, Petitioner began a dispute with the rental management company who managed the apartment complex where she lived. This resulted in Petitioner giving the company 60 days' notice that she would not renew her lease after October 31, 2005. The rental company, mean while, would not accept her tender of rental payments for August and September 2005, and initiated eviction proceedings in County Court.

7. Prior to the final hearing, a stipulation was signed by the parties and approved by the County Court. Petitioner moved out of her apartment on October 31, 2005.

8. On November 1, 2005, Petitioner, along with one foster child, moved into a house located at 7741 Fort Sumter Drive,

Orlando, Florida 32822. CHS was not notified of this change of address until November 11, 2005.

9. The CHS Dependency Specialist worked diligently with Petitioner to obtain a license for her new residence. DCF issued a new family foster care license for 7741 Fort Sumter Drive, Orlando, Florida 32822 on December 20, 2005.

10. Petitioner maintained an unlicensed foster home from the period of November 1, 2005, through December 20, 2005. Although the foster child residing with Petitioner was not removed from the home, Petitioner was reminded of the need to notify CHS prior to any moves in the future.

11. On April 6, 2006, Petitioner notified CHS that she had moved from her Fort Sumter Drive, Orlando, residence to a residence in Poinciana, Florida (Osceola County) at the end of March 2006.

12. It was subsequently determined that a Writ of Possession for the Orlando residence was issued by the Orange County Court on March 2, 2006. Petitioner testified at the hearing that she moved at the end of March 2006, because of poor maintenance and discriminatory and retaliatory conduct by the landlord.

13. The foster child was not removed from the home and the CHS Dependency Specialist again worked diligently and patiently with Petitioner to obtain a license for her family

foster care residence at 127 Conch Drive, Kissimmee, Florida 34759 (Poinciana).

14. Due primarily to Petitioner's lack of cooperation, a completed health inspection of the home was not completed until August 4, 2006.

15. During this time, Petitioner submitted her application for relicensure on May 26, 2006. On July 13, 2006, the CHS Dependency Specialist hand delivered a letter, dated July 11, 2006, to Petitioner reminding her that a face-to-face visit and a walk through of the home was required before recommendation could be given. Petitioner was given a check-list of 16 items which were due to be completed prior to July 16, 2006, or CHS could not recommend renewal of her foster care license.

16. On July 18, 2006, CHS sent Petitioner a follow-up letter. Although another home inspection had taken place on July 17, 2006, it was not a satisfactory home health inspection. In addition, proof of completion of 12 hours of training had not been demonstrated and six other items on the check-list were, also, not completed. The deadline for compliance was extended to August 3, 2006, with a reminder that the existing license expired on August 19, 2006.

17. CHS followed with reminder telephone calls on July 19 and 20, followed by another letter on July 25, 2006, that all remaining items must be completed by August 3, 2006.

18. Petitioner demonstrated compliance with four of the items, but did not provide Radon Test results or proof that her 2A10BC fire extinguisher was tagged and inspected.

19. On August 18, 2006, the foster child, living in Petitioner's home, was removed. On August 19, 2006, Petitioner's family foster care license expired by operation of law, without Petitioner having submitted a completed application package to CHS.

20. On August 28, 2006, Respondent sent Petitioner a notice of intent to deny her application for relicensure. The reasons for the denial were outlined on the four-page letter. Petitioner objected to the notice and requested a formal hearing, and this proceeding followed.

21. From the evidence, it is apparent that CHS worked diligently in helping Petitioner transfer her existing license two times, when Petitioner moved without notifying CHS before the move; and encouraged and worked with Petitioner to complete the application for renewal a month before the expiration of her license. However, due to Petitioner's procrastination and/or resistance, the completed documentation was not sent in to Respondent prior to the expiration of her prior license.

CONCLUSIONS OF LAW

22. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter to this

case pursuant to Section 120.569 and Subsections 120.57(1), and 409.175(6)(d)1., Florida Statutes (2006).¹

23. Section 409.175, Florida Statutes, relating to licensure of family foster homes reads, in pertinent part:

(1)(a) The purpose of this section is to protect the health, safety, and well-being of all children in the state who are cared for by family foster homes, residential child-caring agencies, and child-placing agencies by providing for the establishment of licensing requirements for such homes and agencies and providing procedures to determine adherence to these requirements.

* * *

(2) As used in this section, the term:

* * *

(e) "Family foster home" means a private residence in which children who are unattended by a parent or legal guardian are provided 24-hour care. Such homes include emergency shelter family homes and specialized foster homes for children with special needs. A person who cares for a child of a friend for a period not to exceed 90 days, a relative who cares for a child and does not receive reimbursement for such care from the state or federal government, or an adoptive home which has been approved by the department or by a licensed child-placing agency for children placed for adoption is not considered a family foster home.

(f) "License" means "license" as defined in s. 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.

(g) "Operator" means any onsite person ultimately responsible for the overall operation of a child-placing agency, family foster home, or residential child-caring agency, whether or not she or he is the owner or administrator of such an agency or home.

(h) "Owner" means the person who is licensed to operate . . . family foster home. . . .

* * *

(k) "Screening" means the act of assessing the background of personnel and includes, but is not limited to, employment history checks as provided in chapter 435, using the level 2 standards for screening set forth in that chapter. . . .

* * *

(3)(a) The total number of children placed in each family foster home shall be based on the recommendation of the department, or the community-based care lead agency where one is providing foster care and related services, . . . and the background, experience, and skill of the family foster parents.

* * *

(c) For any licensed family foster home, the appropriateness of the number of children in the home must be reassessed annually as part of the relicensure process.

* * *

(5)(a) The department shall adopt and amend licensing rules for family foster homes, . . .

* * *

(6)(e) At the request of the department, the local county health department shall inspect a home . . . according to the licensing rules promulgated by the department. . . .

* * *

(h) Upon determination that the applicant meets the state minimum licensing requirements, the department shall issue a license without charge to a specific person or agency at a specific location. A license may be issued if all the screening materials have been timely submitted; . . . The license is nontransferable. . . . Except as provided in paragraph (j), the license is valid for 1 year from the date of issuance, unless the license is suspended or revoked by the department or is voluntarily surrendered by the licensee. The license is the property of the department.

(i) A license issued for the operation of a family foster home . . . will expire automatically 1 year from the date of issuance. . . . Ninety days prior to the expiration date, an application for renewal shall be submitted to the department by a licensee who wishes to have the license renewed. A license shall be renewed upon the filing of an application on forms furnished by the department if the applicant has first met the requirements established under this section and the rules promulgated hereunder.

24. Florida Administrative Code Rule 65C-13.003, Pre-Service and In-Service Training, provides in pertinent part:

Sections 409.175(13)(a), (b), F.S., requires the department to provide pre-service and in-service training for foster and emergency shelter parents who are licensed and supervised by the department as a condition of licensure.

* * *

(2) In-Service Training. Section 409.175(13)(c), F.S., requires that prior to the renewal of a license, each foster parent, emergency shelter parent and family group home parent successfully complete eight hours of in-service training.

25. Florida Administrative Code Rule 65C-13.006 provides:

(1) The department must receive the report of an approved sanitation inspection from the local health program office. The counselor must request the inspection in sufficient time to secure the report prior to the date the old license expires.

(2) The counselor should send the staff inquiry - annual relicensing study to all counselors who have had children in the home for completion prior to the expiration of the license. This information is vital to assess the home.

(3) Prior to the issuance of a new license, the counselor must secure Abuse Registry and law enforcement clearance for all adults who reside in the home following the procedures outlined in this rule.

(4) The counselor must complete section A of the relicensing summary for foster homes for dependent children.

(5) The substitute care parent must complete section B of the relicensing summary for foster homes for dependent children.

(6) The substitute care parent must sign an application for a license form.

(7) The counselor must meet with the substitute care family to review the relicensing summary for foster homes for dependent children and to formulate recommendations for relicensure.

(8) The substitute care parents must have completed eight hours of in-service training. The number of hours of training, and type of training provided should be documented in the case file of the substitute parents.

(9) At least two weeks prior to the date for relicensure copies of all forms, including the sanitation inspection, must be submitted to the district office with a request for the issuance of a new license.

26. Florida Administrative Code Rule 65C-13.005, Changes

During the Licensed Year, provides in pertinent part:

* * *

(2) If a family changes its location during the licensing year, the new home must be evaluated and a new sanitation inspection must be made by the local county public health unit. The certificate of license issued for the old location must be returned to the district office, together with a relicensing summary for foster homes for dependent children completed on the new home, a copy of the sanitation inspection report, and a recommendation with regard to the issuance of a license for the new address. An application for a license must be signed by the substitute parents showing

the new address. If approved, a new certificate of license will be sent to the unit office for delivery to the substitute care parents.

27. Florida Administrative Code Rule 65C-13.011, Minimum Standards for Licensure of Family Foster Homes, Family Emergency Shelter Homes and Family Group Homes, provides, in pertinent part:

. . . The department has applied the recommended standards of the American Public Welfare Association when establishing the following standards. Any exceptions to the following standards must be for good cause and must be approved in writing by the district Children and Families Program Office prior to the exceptions being implemented.

(1) Family Composition.

* * *

(c) Single parent families may be selected when they can effectively meet the particular needs of a child.

* * *

(4) Income. 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.

* * *

(9) Screening. Substitute care parents must meet the screening requirements as

stated in paragraph 65C-13.009(6)(b),
F.A.C., of this chapter.

* * *

(11) Physical Environment.

* * *

(c) The home must be inspected and approved
by a representative of the local health
program office prior to licensing and
annually thereafter. Inspections cover
sanitation, health, fire prevention and
safety.

* * *

(15) Fire Safety.

* * *

(f) The home should be equipped with the
following:

* * *

3. Portable chemical fire extinguisher in
the kitchen size 2A10BC.

* * *

28. Subsection 409.175(9)(b)1. and 2., Florida Statutes,
authorizes Respondent to deny, suspend, or revoke a license for
an intentional or negligent act materially affecting the health
or safety of children in the home, and/or a violation of the
provisions of this section or of licensing rules promulgated
pursuant to this section.

29. Petitioner is seeking a renewal of her family foster
home license. Respondent has issued its notice of intent to

deny Petitioner's application for renewal. As the party asserting the affirmative of an issue before this administrative tribunal, Respondent has the burden of proof. Florida Department of Transportation v. J.W.C. Company, 396 So. 2d 778 (Fla. 1st DCA 1981). However, the license which Petitioner has applied for is not a professional license and does not create a property right. § 409.175(2)(f), Fla. Stat. (2006). Therefore, Respondent must establish facts, by a preponderance of evidence, which support the denial of the license. Department of Banking and Finance v. Osborne Stern & Co., 670 So. 2d 932, 934 (Fla. 1996).

30. The evidence shows that Petitioner was non-compliant with Respondent's clearly stated regulations; did not keep CHS informed of her current address; was uncooperative in working with the CHS representative, and was less than honest in her responses for information. These are sufficient grounds to deny Petitioner's application for relicensure as a family foster care home.

RECOMMENDATION

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

RECOMMENDED that:

Petitioner, Antoinette Scanziani's, application for a renewal of her family foster home license be denied.

DONE AND ENTERED this 11th day of May, 2007, in
Tallahassee, Leon County, Florida.

S

DANIEL M. KILBRIDE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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this 11th day of May, 2007.

ENDNOTE

1/ All references to Florida Statutes are to Florida Statutes
(2006), unless otherwise indicated.

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.