



## PRELIMINARY STATEMENT

The procedural history of this proceeding is discussed in detail in the Findings of Fact. In summary, Respondent denied Petitioner's application to be licensed as foster parents, and Petitioners timely requested a formal hearing. Respondent referred the case to DOAH to conduct the hearing.

At the hearing, Petitioners each testified and submitted four exhibits for admission into evidence. Respondent presented the testimony of seven witnesses and submitted 11 exhibits.

The identity of the witnesses and exhibits, and the rulings regarding each, are reported in the record of the formal hearing. Neither party ordered a transcript of the hearing. Petitioner and Respondent timely filed their respective Proposed Recommended Orders on May 2 and 7, 2007.

## FINDINGS OF FACT

1. Respondent is the state agency responsible for licensing and regulating foster parents in the state. Respondent first licensed Petitioners as foster parents on June 29, 2003, and renewed the license on June 29, 2004. The last license expired on June 28, 2005.

2. Petitioners allowed their license to expire on June 28, 2005. They wanted to make improvements to a new home they had moved into before bringing foster children into the home.

3. Petitioners submitted a completed application for a new license on March 20, 2006. By letter dated April 27, 2006, Respondent denied the application for licensure. Petitioners did not receive the notice of denial until May 3, 2006, because Respondent sent the notice to the address of record in the old license application files instead of the correct address in the application for a new license that is at issue in this proceeding.

4. The letter denying the application for licensure incorrectly stated that Respondent intended to revoke Petitioners' license. The misstated literal terms of the letter nevertheless provided Petitioners with adequate notice of the actual proposed agency action to deny the license application.

5. Contrary to the literal terms of the letter, Petitioners understood that the letter constituted notice of Respondent's proposed denial of their license application. Petitioners timely requested an administrative hearing by letter dated May 7, 2006. The request for hearing stated, in relevant part:

[W]e received notice advising us that [Respondent] has initiated proceedings to revoke our foster home license. . . . Please note that we are not a licensed foster home at this time. Our license expired in June, 2005. So, we are somewhat confused about proceedings to revoke something that does not exist. Please be advised that we did [sic] however, complete

an application for a 'new' foster care license. . . . We were also told that, [sic] our application would be denied and that we would have the right to request an administrative hearing to contest the 'denial'. If the letter that we received is in regard to our application for licensure, and if that application has been denied, then we are requesting an administrative hearing to contest that decision.

Respondent's Exhibit 1C.

6. Respondent gave the request for hearing to the agency clerk to forward to DOAH to conduct the hearing. However, the agency clerk was confused by the literal terms of the denial letter. When the agency clerk could not ascertain an existing foster home license to revoke, the agency clerk merely "sat" on the request for hearing and did not forward it to DOAH.

7. By letter dated November 13, 2006, Respondent corrected the literal terms of the previous letter. The letter dated November 13, 2006, correctly notified Petitioners of Respondent's proposed denial of the license application.

8. By letter dated November 23, 2006, Petitioners again requested an administrative hearing to contest the proposed denial of the license application. In addition, the request for hearing notified Respondent of Petitioners' intent to rely on the so-called default license provisions in Subsection 120.60(1), Florida Statutes (2006).<sup>1</sup>

9. Respondent gave the request for hearing to the agency clerk. This time, the agency clerk referred the matter to DOAH. However, the agency clerk did not refer the request for hearing to DOAH within the 15 days mandated in Subsection 120.569(2)(a). Rather, DOAH received the referral from the agency clerk on March 6, 2007; approximately 103 days after the date of the second request for hearing and approximately 303 days after the date of the first request for hearing.

10. The delays in referring the requests for hearing to DOAH did not impair either the fairness of the proceeding or the correctness of the agency action. It is undisputed that when Petitioners were previously licensed as foster parents they repeatedly administered corporal punishment to a foster child who was approximately four years old at the time. It is also undisputed that Petitioners punished the child by requiring the child to stand for one hour to one hour and a-half almost daily. Both types of discipline violate applicable standards for foster care and evidence Petitioners disqualification to be foster parents.

11. The parties spent most of the evidentiary hearing on the issue of whether the four-year-old female suffered from a condition identified in the record as reactive attachment disorder (RAD). However, the trier of fact finds evidence concerning RAD to be irrelevant and immaterial to the issue of

whether Petitioners are qualified to be foster parents. The evidence that Petitioners administered unauthorized discipline to a four-year-old foster child in their care clearly evidences their lack of qualification. No medical evidence established a nexus between the alleged disorder and illicit discipline of a young child.

#### CONCLUSIONS OF LAW

12. DOAH has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57(1). DOAH provided the parties with adequate notice of the formal hearing.

13. Petitioners are not entitled to a so-called default license pursuant to Section 120.60. Respondent issued the first notice of denial on April 27, 2006, within 90 days of March 20, 2006, when the license application was complete. The misstated literal terms of the denial letter do not alter the adequacy of the notice of denial within the 90-day time limit prescribed in Section 120.60.

14. A violation of the time limits prescribed in Subsection 120.569(2)(a) does not require reversal of the proposed agency action in the absence of a showing that the delay impaired either the fairness of the proceeding or the correctness of the action. Department of Transportation v. Courtelis, 436 So. 2d 92 (Fla. 1983); Department of Business

Regulation, Division of Pari-Mutuel Wagering, 417 So. 2d 671 (Fla. 1982); Kasdaglis v. Department of Health, 827 So. 2d 328 (Fla. 4th DCA 2002). A preponderance of the evidence does not support a finding that the violation of Subsection 120.569(2)(a) impaired either the fairness of the proceeding or the correctness of the action.

15. Petitioners must show they are qualified to be licensed as foster parents. Petitioners must satisfy their burden of proof by a preponderance of the evidence. § 409.175(2)(f) and (6)(d)3.; Florida Department of Transportation v. J.W.C. Company, 396 So. 2d 778 (Fla. 1st DCA 1981). For reasons stated in the Findings of Fact, Petitioners did not satisfy their burden of proof.

#### RECOMMENDATION

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

RECOMMENDED that Respondent issue a final order denying Petitioners' application to be licensed as foster parents.

DONE AND ENTERED this 22nd day of May, 2007, in  
Tallahassee, Leon County, Florida.

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DANIEL MANRY  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 22nd day of May, 2007.

ENDNOTE

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

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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.