

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ROBIN PEAGLER,)
)
Petitioner,)
)
vs.) Case No. 08-1757
)
DEPARTMENT OF CHILDREN AND)
FAMILY SERVICES,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case before Judge Diane Cleavinger, Administrative Law Judge, Division of Administrative Hearings, on July 29, 2008, in Pensacola, Florida.

APPEARANCES

For Petitioners: Robin Peagler, pro se
1011 West Chase Street
Pensacola, Florida 32501

For Respondent: Eric D. Schurger, Esquire
Assistant Regional Counsel
Department of Children
and Family Services
160 Government Street, Suite 601
Pensacola, Florida 32502-5734

STATEMENT OF THE ISSUE

Whether Petitioner's application for licensure as a foster home should be granted.

PRELIMINARY STATEMENT

In a letter dated February 18, 2008, the Department of Children and Family Services (Department or Respondent) notified Robin Peagler (Petitioner) that her application for licensure as a foster home was denied for failure to meet the minimum standards for licensure set out in Section 409.175, Florida Statutes, and Florida Administrative Code Rule 65C-13. Specifically, the application was denied based on Petitioner's alleged inconsistent and/or false statements on licensing forms and an inability to work with Department personnel as demonstrated by her refusal to leave the office of the Chief Counsel of the Department, her insistence in participating in a closed visitation, inappropriate behavior that resulted in her termination from employment with the Department, and multiple litigations against the Department. Petitioner disagreed with the Department's denial and timely requested a formal administrative hearing contesting Respondent's action. Petitioner's request for hearing was forwarded to the Division of Administrative Hearings.

At the hearing, Petitioner testified on her own behalf and offered the testimony of one witness. Additionally, Petitioner offered 10 exhibits into evidence. The Department offered the testimony of six witnesses and introduced 20 exhibits into evidence.

After the hearing, Petitioner filed a Proposed Recommended Order on September 11, 2008. Respondent filed a Proposed Recommended Order on September 26, 2008.

FINDINGS OF FACT

1. The Department is the state agency responsible for licensure of foster homes. In carrying out its licensure duties, the Department contracts some license processing functions to FamiliesFirst Network. In turn, FamiliesFirst subcontracts with Children's Home Society to perform a variety of license processing functions. In this case, Children's Home Society was the organization that initially reviewed Petitioner's 2007 licensure application.

2. In 1984, prior to her employment with the Department, Petitioner married a man in the military. Petitioner testified that the marriage was one of convenience for both parties and, while legal, was not a true marriage since the marriage was never consummated. Petitioner's explanation regarding the benefit each got from the marriage was vague. In essence, Petitioner characterized her marriage as a way for her to get out of financial difficulty. She testified that a soldier approached her and offered to pay her bills if she would marry him so that he could live off base. However, Petitioner legally divorced her husband in 1988 when she learned that he had contracted AIDS.

3. Since at least 1997, Petitioner was employed by the Department. At some point, she was employed as an Economic Self-Sufficiency Specialist I (ESSI). As an ESSI, Petitioner generally handled applications for food stamps and interviewed clients to determine eligibility for food stamps, Medicaid and cash assistance benefits.

4. In 1999, while employed with the Department, Petitioner applied for licensure as a foster home. On the initial licensing application in 1999, Petitioner wrote in the marital history section, "I am single and have never been married." On the foster family self-study, Petitioner left her marital history blank. Furthermore, Petitioner marked "n/a" for 'not applicable' in the section regarding her divorce. That information was incorporated in the initial licensing study compiled by Children's Home Society on April 28, 1999. Clearly, the statements made by Petitioner in her 1999 application and the information she provided to the Department during the application process were false since she had been married and divorced.

5. Petitioner also completed a licensure self-study form in April 2001. In the sections regarding her marital history, Petitioner marked "n/a" for 'not applicable,' incorrectly indicating that she had never been married or, in some manner,

the section on marriage did not apply to her. Again, the information was false.

6. In another licensure self-study in September 2001, Petitioner left her marital history blank. Similarly, Petitioner left the marital history section blank on a personal profile form completed by her in 2001. That document was updated in 2003 and the marital history section was again left blank.

7. In March 2003, Petitioner again marked "n/a" in the marital history section of a licensure self-study form. At about the same time, Petitioner also completed a questionnaire as part of the home-study process performed by FamiliesFirst Network. One of the questions called for a box to be checked as to how a previous marriage ended. Petitioner did not check any of the answers or indicate that she had been divorced. The lack of response is particularly troubling since Petitioner had indicated at least once that she had not been married, at least twice that the marital history sections on various forms did not apply to her based on her rationalization that the marriage had never been consummated, and at least once that the divorce history section did not apply to her. However, Petitioner knew that she had been legally married and legally divorced. Indeed, the fact of her divorce was not affected by the lack of consummation of the marriage; her ostensible rationale for not

recognizing her marriage was from a religious point of view. These misrepresentations were material to the review of her fitness for licensure.

8. Finally, in her 2005 application, Petitioner did indicate to the person who was processing her application that she was married. The provision of the correct information by Petitioner in 2005 occurred after the processor inquired and pursued questions about Petitioner's marital history and does not mitigate Petitioner's past multiple misrepresentations regarding her marital and divorce history.

9. At hearing, Petitioner acknowledged that she provided inconsistent information about her prior marriage. She was concerned that her marriage was coming back to haunt her. She stated, "I didn't know that it was going to come back and bite me." However, such concern does not mitigate the fact that Petitioner failed, on multiple occasions, to disclose her divorce and marriage to the Department.

10. As indicated above, Petitioner was also employed by the Department during the time she was seeking licensure as a foster home. Unfortunately, throughout the time that Petitioner was employed, she developed a very troubled relationship with the Department and, in particular, with Katie George, the Department's General Counsel.

11. Petitioner's difficulty with the Department resulted in several legal cases against the Department in which Ms. George represented the Department. These cases extended over a five-year period. The cases involved two small claims cases requesting reimbursement for sodas and copying costs that arose out of five other litigations before the Public Employees Relations Commission. The two small-claims lawsuits seeking reimbursement for out-of-pocket expenses, including sodas and photocopies, were dismissed by the Court.

12. The evidence demonstrated that Petitioner was terminated twice by the Department. Petitioner contested her first dismissal before the Public Employees Relations Commission. Petitioner's first dismissal was overturned by the Public Employees Relations Commission on a legal technicality. The Commission specifically noted that they neither condoned nor agreed with malfeasance in office but had to grant a double-jeopardy type exception since the Department had originally suspended Petitioner for malfeasance in office and then attempted to increase the discipline it had imposed to dismissal of Petitioner. Petitioner was reinstated to her position by the Commission and back pay was ordered. As part of the back-pay case with the Public Employees Relations Commission, the Petitioner was denied reimbursement for private cash advances

and private auto insurance expenses that she claimed the Department owed to her as part of her wages.

13. Petitioner's second termination was for conduct unbecoming a public employee and involved outrageous and bizarre behavior towards a client of the Department who had applied for Medicaid and food stamps. During the incident Petitioner berated, belittled and treated the client so poorly that he was reduced to tears and would not return for food stamps when it was time to renew the same. The client prayed with Petitioner inside her office. The client described Petitioner as chanting and acting so strangely that he abruptly ended the prayer by saying "amen." Additionally, Petitioner told the client that she understood how he felt and that the Department was out to terminate her because some of her co-workers thought she was crazy. She also told the client the Department had tried, but failed, to terminate her before. The client eventually filed a complaint with the Department regarding Petitioner and her behavior during the interview with the client. Later, Petitioner called the client at his unlisted phone number that she could only have obtained through Departmental records and tried to intimidate the client into changing his complaint or not testifying.

14. Based on this incident and some other incidents regarding Petitioner's work, the Department dismissed Petitioner

a second time. Petitioner, again, contested her dismissal before the Public Employees Relations Commission. The dismissal was upheld by all the Courts who heard the case and eventual appeals.

15. The nature of the litigation and the eventual outcome are illustrated in the Public Employees Relations Commission Hearing Officer's Recommended Order dated February 10, 2003; the Public Employees Relations Commission Final Order dated March 17, 2003; the per curiam affirmed opinion of the First District Court of Appeal dated February 18, 2004; the Order of the First District Court of Appeal denying rehearing dated April 5, 2004, and the Order of the Supreme Court of Florida dismissing review dated May 19, 2004.

16. In addition, Petitioner filed a federal employment discrimination lawsuit against the Department. The suit was based, in part, on her earlier termination. During the course of the federal litigation, depositions were taken. During those depositions, Ms. George learned that Petitioner had falsified her application with the Department because she had previous jobs from which she had been fired that were not listed on the application. However, the Department was represented by outside risk counsel, who negotiated a \$5,000.00 settlement payment to Petitioner. The settlement was accepted by the Department based on the nuisance value of continued litigation of the case. The

Department did not admit any discriminatory action towards Petitioner in its termination of her.

17. At some point after her second termination, Petitioner visited Ms. George's legal office at the Department. Petitioner visited the office to either pick up or deliver some papers. However, testimony was not clear on the exact nature of the visit and what occurred during Petitioner's visit. Testimony did establish that Petitioner became disruptive in the office towards Ms. George's legal staff. Petitioner was asked to leave and initially refused. Eventually, Petitioner left the office after Ms. George instructed her staff to call law enforcement.

18. Petitioner also filed a complaint with the Florida Bar regarding Ms. George's representation of her client. The Bar complaint against Ms. George was dismissed by the Florida Bar.

19. Finally, during this proceeding, Petitioner accused Ms. George of sending law enforcement to Petitioner's house. Ms. George did not take such action against Petitioner.

20. Given all of these incidents, Petitioner's troubled employment history and litigation with the Department, the evidence demonstrated that, in the past, Petitioner has not worked cooperatively with the Department and seems to have developed a difficult and suspicious relationship with it. Based on this history, the evidence did not demonstrate that

Petitioner could, presently or in the future, work cooperatively with the Department as a foster parent.

21. The 2007 application was reviewed by Nicola Spear. Ms. Spear works in the licensing section of FamiliesFirst Network. She compiled the November 2007 foster parent licensing home-study on Petitioner.

22. After reviewing the application and completing the home-study, Ms. Spear recommended that Petitioner's license application be granted by the Department. Ms. Spear was unaware of the Petitioner's history regarding the Department or her prior statements regarding her marriage and divorce.

23. She subsequently learned the reasons why Petitioner was terminated from her employment with the Department, including inappropriate client interactions. Once the Department learned of Petitioner's application and the initial recommendation of Ms. Spear, either Ms. George or administrative staff called a meeting with its contractors and Ms. Spear to review the recommendation and provide information regarding Petitioner's history with the Department.

24. After receiving the information, Ms. Spear changed her recommendation and recommended that Petitioner not be licensed as a foster parent. Ms. Spear testified that while Petitioner was very cooperative during the licensure process, she was

concerned that Petitioner might not be able to work cooperatively with the Department or its contracted partners.

25. Mary Martin, a licensing specialist with the Department, received Petitioner's licensing packet from Ms. Spear. Ms. Martin was made aware that Petitioner had been dismissed from the Department, had a history of difficulties with the Department and of Petitioner's lack of candor regarding her marriage and divorce.

26. Ms. Martin also learned from Ms. Oakes, a contractor for the Department, that in 2002, Ms. Oakes had instructed her staff to call law enforcement to a visitation between foster children and their parent because Petitioner wanted to participate in the court-ordered closed visit and would not leave the visitation site at Children's Home Society. However, the contractor who supplied this information did not witness the incident. The person who was present during the alleged incident did not testify at the hearing and all the testimony regarding the incident was based on hearsay. Additionally, Petitioner was not aware that law enforcement had been called since Petitioner voluntarily left the visitation before the police arrived. Given the hearsay nature of the facts surrounding the visitation incident, the incident cannot provide a basis for denial of Petitioner's application.

27. On the other hand, Ms. Martin found Ms. Peagler hostile to work with during the interview process with her. Ms. Martin did not feel that Petitioner could work cooperatively with the Department and could not be trusted to provide accurate information to the Department. She recommended denial of Petitioner's 2007 application.

28. Ultimately, Petitioner's foster home application was denied on February 18, 2008. The basis for denial was her false statements, her history with the Department, and her intolerance and inflexibility with the Department.

29. Currently, Petitioner is self-employed as a provider of services to persons with developmental disabilities. She is licensed through the Agency for Persons with Disabilities (APD). There was no evidence that Petitioner had difficulty working with APD. The evidence also did not show that Petitioner had a long and troubled relationship with APD or that APD was aware of Petitioner's misrepresentations regarding her marriage and divorce.

30. Robin Woods Reshard testified generally about her friendship with Petitioner. Although she works with school-age children, she never worked with or for the Department. Ms. Reshard primarily knows Petitioner through their Church. She speaks highly of Petitioner, although finds her to be

stubborn, at times. She thinks Petitioner would make an excellent foster parent.

31. However, given the facts of this case regarding Petitioner's multiple litigations with the Department, her general suspiciousness regarding the Department and its personnel, her misrepresentations regarding her marriage and divorce, and her mistreatment of a client of the Department, her good work with APD and Ms. Reshard's recommendation do not demonstrate that Petitioner can now work cooperatively with the Department or can be trusted by the Department to be honest with it in fostering children. Both of these qualities are necessary for successful licensure as a foster home. Therefore, Petitioner's application for licensure as a foster home should be denied.

CONCLUSIONS OF LAW

32. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding. Sections 120.569 and 120.57(1), Florida Statutes (2008).

33. Section 409.175, Florida Statutes (2007), governs the licensure of foster homes. The purpose of the law is to protect children in the foster care of the state.

34. The Department of Children and Family Services is the state agency responsible for granting or denying applications for foster home licensure. § 409.175, Fla. Stat. (2007).

35. The definition of "license" found in Section 409.175(2)(f), Florida Statutes (2007), includes the following directives:

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.

36. The Department must screen applicants for foster home licensure and make a determination that they possess good moral character. The lack of good moral character is grounds for denial, revocation, or suspension of a foster home license. § 409.175(4)(a); (5)(a)5; (6)(a); (9)(b)2. & 3., Fla. Stat. (2007). Additionally, Florida Administrative Code Rule 65C-13.009(1)(b), (1)(d)11., & (1)(e)5. and (3)(a), requires foster parents to be tolerant, flexible and able to work in partnership with the Department. Recodified at Fla. Admin. Code R. 65C-13.022, et seq.

37. Petitioner has the burden of proof to establish by a preponderance of evidence that the foster home license application should be granted.

38. Section 409.175(12)(a)2., Florida Statutes (2007) provides that,

It is unlawful for any person or agency to:

Make a willful or intentional misstatement on any license application or other document required to be filed in connection with an application for a license.

Such a misstatement is a first-degree misdemeanor.

§ 409.175(12)(d)1., Fla. Stat. (2007). The Department has also declared that "[a]pplicants who make such willful or intentional misstatements will have their license denied or revoked."

Fla. Admin Code R. 65C-13.001, now Fla. Admin. Code R. 65C-13.031 (effective April 6, 2008).

39. In this case, Ms. Peagler has not established by a preponderance of the evidence that she is entitled to a foster home license.

40. The evidence demonstrated that Petitioner made willful and intentional misstatements on numerous licensure forms. Further, she was terminated from the Department for serious misconduct towards a client. Finally, Petitioner has been intolerant, inflexible and unable to work cooperatively with the

Department and has a significantly troubled history with the Department and its personnel.

41. On the other hand, Petitioner is licensed by APD to work with persons with disabilities. However, such licensure is separate from licensure as a foster parent by the Department. The decision of APD to license Petitioner as a direct-service provider to persons with developmental disabilities is not binding upon the Department regarding Petitioner's application to be a licensed foster parent. See § 435.07(5), Fla. Stat. (2007). In this case, Petitioner's work with the APD indicates that she can work cooperatively with APD personnel. However, it does not indicate that Petitioner can work cooperatively with the Department, its personnel or contractors. Given these facts, Petitioner's application for licensure as a foster home should be denied.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Children and Family Services enter a Final Order denying the application of Robin Peagler for foster home licensure.

DONE AND ENTERED this 4th day of December, 2008, in
Tallahassee, Leon County, Florida.

Diane Cleavinger

DIANE CLEAVINGER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 4th day of December, 2008.

COPIES FURNISHED:

Eric D. Schurger, Esquire
Department of Children
and Family Services
160 Governmental Center, Suite 601
Pensacola, Florida 32501-5734

Robin Peagler
1011 West Chase Street
Pensacola, Florida 32501

Gregory Venz, Agency Clerk
Department of Children
and Family Services
Building 2, Room 204B
1317 Winewood Boulevard
Tallahassee, Florida 32399-0700

George Sheldon, Interim Secretary
Department of Children
and Family Services
Building 1, Room 202
1317 Winewood Boulevard
Tallahassee, Florida 32399-0700

John J. Copelan, General Counsel
Department of Children
and Family Services
Building 2, Room 204
1317 Winewood Boulevard
Tallahassee, Florida 32399-0700

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.