

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

C. L.,)
)
)
Petitioner,)
)
vs.) Case No. 11-3235
)
DEPARTMENT OF CHILDREN)
AND FAMILIES,)
)
Respondent.)
_____)

RECOMMENDED ORDER

A hearing was conducted in this case pursuant to sections 120.569 and 120.57(1), Florida Statutes¹ before Administrative Law Judge Jessica Varn of the Division of Administrative Hearings (DOAH). The hearing was held on September 29, 2011, by video teleconference at sites in Miami and Tallahassee, Florida.

APPEARANCES

For Petitioner: Jean-Claude Dugue, Esquire
7872 Northwest 201 Terrace
Hialeah, Florida 33015

For Respondent: Leslie Hinds St-Surin, Esquire
Department of Children and Families
401 Northwest 2nd Avenue, Suite N-1014
Miami, Florida 33128

STATEMENT OF THE ISSUE

Whether Petitioner's request for a foster home license should be denied due to her alleged failure to comply with foster care licensing requirements.

PRELIMINARY STATEMENT

By letter dated May 9, 2011, the Department of Children and Families (Department) advised Petitioner of its intent to deny her foster care home license. It stated:

During the review of your relicensing file it came to the Department's attention that you failed to disclose that your daughter, Cleopatris Milledge, was residing in your home. This issue was brought to the Department's attention on February 18, 2011 after review of two (2) exit interviews by two (2) different foster children that both stated they resided in your home with your daughter. From information and belief, it appears that Ms. Milledge may have been residing in the home for several years without the Department's knowledge because in 2009 another foster child had also disclosed in their interview that Ms. Milledge was residing in the home although when questioned by Citrus, you consistently denied that Ms. Milledge was a household member.

Based on the disclosures made by the foster children in the exit interviews, on March 10, 2011, the Department's Family Service Specialist, Ada Gonzalez along with Citrus Health Network's Licensing Supervisor, Dulce Pupo, made an unscheduled visit to your foster home and observed your daughter, Cleopatris Milledge, in the home. At this visit, Ms. Gonzalez and Ms. Pupo interviewed the foster child in your home who also stated that your daughter resided in the home and identified her room. Ms.

Gonzalez and Ms. Pupo entered the room identified as your daughter's bedroom and found women's shoes, clothing and accessories. Photographs were taken of the bedroom and its contents. At this time, Ms. Gonzalez and Ms. Pupo questioned you as to whether your daughter was residing in the home to which you answered that she was not a resident in your home.

As part of the relicensing home study you are required to identify and disclose every licensing year all household members and frequent visitors. Since your initial licensing with Citrus in 2006, you have never identified your daughter as either a household member or frequent visitor.

On March 17, 2011, a staffing was conducted to discuss the status of your foster care license in light of the evidence gathered by the Department and Citrus. You were in attendance at the staffing and stated to the panel that although you did not feel your daughter had previously been a household member you realized after the unscheduled visit conducted by Ms. Gonzalez and Ms. Pupo that she in fact was a household member despite denying this at the time of their visit on March 10, 2011.

Furthermore, prior to the March 17, 2011 staffing, there had been another staffing on January 6, 2011 to address your son's arrest for battery/aggravated assault that led to an abuse investigation conducted by the Department and subsequently closed with verified findings against your son. Although you were aware that your son had been arrested and that there had been an investigation, you failed to disclose the arrest to Citrus and/or the Department in direct violation of Florida Administrative Code section 65C-13.027 that requires you to report any arrests of a household member. The staffing held on January 6, 2011 mandated that your son move out of the residence.

Based on your failure to disclose that your daughter was either a household member

or frequent visitor along with your failure to report that your son had been arrested and investigated by the Department, the Department has determined that you were in clear violation of applicable statutes, codes and the bilateral service agreement as more specifically identified below.

Pursuant to the section entitled "Foster Parent Responsibilities to the CPA include" located on page 5, paragraph "d" of your bilateral service agreement you are required to make an immediate disclosure of any change in your household composition for which you failed to do so. This section states as follows: "To notify the CPA **immediately** of a potential change in address, living arrangements, marital status, family composition (who is in the home), employment, significant health changes or any other condition that may affect the child's well-being." This most recent bilateral service agreement was executed by you on December 10, 2010. The Department has also determined that you are in violation of 65C-13.027 of the Florida Administrative Code, section 1(a)&(b) entitled "Changes During the Licensed Year" which states in relevant part as follows:

"(1) General Requirements.

(a) The licensed out-of-home caregiver shall report law enforcement involvement with any household member; law enforcement involvement includes arrests, incidents of domestic violence, driving infractions and any local law enforcement response to the home over the course of the licensed year; a change in marital status; a change in household composition; a change of the physical address, changes in financial situation such as bankruptcy, repossessions and evictions, or a serious health issue such as a debilitating injury, or communicable disease regarding a household member, to the supervising agency within 48 hours. Failure to do so may be reason to suspend, deny or revoke a license if the

non-reported situation threatens the safety of any child in care or results in the non-conformity with licensing requirements stated in this rule.

(b) The following occurrences shall be reported by the licensed out-of-home caregiver to the supervising agency upon occurrence:

1. Change in marital status;
2. Change of home telephone number;
3. Change of mailing address;
4. Change of employment or significant change in work schedule prior to the event when possible;
5. Change in household composition."

Furthermore, pursuant to Fla. Stat. s. 409.175(2) (f), a foster home license is not a property right and is, instead a public trust. The Department of Children and Families may deny, suspend or revoke a license for noncompliance with the requirements for licensure in accordance with Fla. Stat. s. 409.175. In light of the above referenced matters and pursuant to Fla. Stat. s. 409.175(9), it is the Department's position that your failure to disclose the members of your household as well as your failure to disclose your son's arrest are serious violations that jeopardize the health, safety and well-being of children placed in your care and therefore the Department firmly believes that there are adequate grounds for denial of your foster home license.

Petitioner requested a hearing by filing an undated Petition for Administrative Hearing, which was received by the Department on June 3, 2011. The matter was referred to DOAH on June 24, 2011, for the assignment of an administrative law judge to conduct a formal hearing and to submit a recommended order to the Department.

Pursuant to notice, the final hearing was scheduled for August 26, 2011. A joint motion for continuance was granted, and the final hearing in this case was conducted on September 29, 2011. At the hearing, Petitioner offered no exhibits; Petitioner testified on her own behalf and presented the testimony of her son, Wayne Clark, and her daughter, Cleopatris Milledge. The Department presented the testimony of Dulce Pupo, Citrus Health Network, Inc. (Citrus), Foster Care Licensing Supervisor; Emma Munoz, Citrus Foster Care Licensing Caseworker; Ada Gonzalez, Department of Children and Families Licensing Specialist; Alma Patino, Department of Children and Families Program Specialist; and Lauren Fuentes, Department of Children and Families Family Safety Program Director. Department's Exhibits 1-3 and 7-9 were offered and admitted into evidence.

No transcript of the proceedings was filed with DOAH. The parties timely filed Proposed Findings of Fact and Conclusions of Law, which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Since 2006, Petitioner has held a foster care license, issued by the Department through Citrus, which is a child placing agency ("CPA"). Since becoming a foster parent, there

have never been any concerns raised as to the care Petitioner provided to the foster children.

2. Every year, Petitioner entered into a Bilateral Service Agreement with Citrus. The Agreement identifies the responsibilities of both the foster parents and Citrus on behalf of the children served in the foster care program.

3. Under the heading "Foster Parent Responsibilities to the CPA" the Bilateral Service Agreement provides that the foster parent is required:

d. To notify the CPA immediately of a potential change in address, living arrangements, marital status, family composition (who is in the home), employment, significant health changes or any other condition that may affect the child's well-being.

e. To notify the CPA promptly of all contacts the family or any member of the home has with police or any law enforcement agencies.

4. In the summer of 2010, Citrus sent a letter to all foster parents reminding them that all family members or visitors who frequent the home on a daily basis, or sleep overnight, or have constant contact with the foster children, must have background checks completed.

5. In the fall of 2010, for the annual review for the upcoming year of 2011, Citrus conducted a home study, which included an announced visit and inspection of the home. The Citrus consultant who conducted the home study recorded that

Warren Clark (Clark), Petitioner's son, was living in the home. Petitioner's daughter was listed as a family member that did not live in the home and was not a frequent visitor. She conducted a background screening on Clark, and discovered that Clark had been arrested twice for battery/aggravated assault charges in May, 2010. If Petitioner's daughter had been listed as a household member or frequent visitor, the consultant would have conducted background screening on the daughter as well. During her announced visit, the consultant saw Clark's room, and only noticed male belongings. She did not see any kind of female items, such as jewelry, makeup, or female clothing.

6. Petitioner never reported Clark's arrests to Citrus. At the hearing, she testified that she was unaware of her son's arrests, and was only made aware of the arrests when the Citrus consultant told her about them. Her son testified that he had never told his mother about the arrests because he was embarrassed. The undersigned does not find this testimony credible, as it is self-serving in nature and is not plausible, given that Petitioner's son lived with Petitioner and was arrested twice in one month. It was ultimately Petitioner's duty to be informed of any involvement between a household member and law enforcement, and to promptly notify the Department.

7. On January 27, 2011, a foster care licensing staffing was held. Petitioner agreed to have her son move out of her home, due to the nature of the arrests.

8. To memorialize the agreement reached during the meeting, Petitioner signed a statement indicating that she would have her son move out of the foster home, and that she understood that if her daughter was going to be a frequent visitor, her daughter needed to be fingerprinted. The statement also indicated that any violation of this agreement might result in revocation of her foster home license. This statement was dated February 22, 2011.

9. During the exit interviews of two of Petitioner's foster care children, the children reported that Petitioner's daughter lived at the foster home.

10. Citrus and the Department conducted an unannounced home visit on March 10, 2011. Dulce Pupo, a Citrus Foster Care Licensing Supervisor, and Ada Gonzalez, a Department Licensing Specialist, conducted the visit. Present at the home were two foster children, Petitioner, Petitioner's daughter, and a tutor for one of the foster children.

11. One foster child, who was approximately 12 years old, told Ms. Gonzalez that Petitioner's daughter lived in the home, and pointed out her bedroom. When Ms. Gonzalez approached the room that had been indicated, Petitioner asked her not to enter

that room, because it was messy. Ms. Gonzalez entered the bedroom, and found items that belonged to a woman; she photographed women's jewelry, skin products, perfumes, women's clothing, women's shoes, and a curling iron that she saw in the room. Petitioner told Ms. Gonzalez that the items were her daughter's items, but that her daughter did not live at the foster home.

12. On March 11, 2011, a staffing was held. Petitioner attended and admitted that her daughter was living at her home. At the hearing, Petitioner explained that during this staffing, she was very upset, and misspoke when she stated that her daughter lived in her foster home. She, did, however, admit that her daughter was a frequent visitor, and that she should have reported that fact to Citrus.

13. On May 9, 2011, the renewal of Petitioner's foster care license was denied by the Department.

CONCLUSIONS OF LAW

14. DOAH has jurisdiction over the subject matter of this proceeding and of the parties hereto pursuant to chapter 120, Florida Statutes.

15. The Department is the agency charged with the responsibility of licensing foster homes in the state of Florida. § 409.175, Fla. Stat.

16. The Department seeks to deny renewal of Petitioner's foster home license. The foster home license is not a professional license and does not create a property right. § 409.175(2)(f). Therefore, the Department, as the party asserting the affirmative of an issue before an administrative tribunal, must establish facts that support its position by a preponderance of the evidence rather than by the clear and convincing standard imposed in professional license cases. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); M.H. and A.H. v. Dep't of Child. & Fams., 977 So. 2d 755, 762 (Fla. 2d DCA 2008); Fla. Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981).

17. Section 409.175(9) grants the Department the authority to deny, suspend, or revoke a foster care license. It provides, in pertinent part:

- (a) The Department may deny, suspend, or revoke a license.
- (b) Any of the following actions by a home or agency or its personnel is a ground for denial, suspension, or revocation of a license:
 - (1) An intentional or negligent act materially affecting the health or safety of children in the home or agency.
 - (2) A violation of the provisions of this section or of licensing rules promulgated pursuant to this section.

18. The Department has adopted rules establishing the standards for foster home license holders. Florida

Administrative Code Rule 65C-13.023, titled "Background Screening Requirements," provides in relevant part:

(1) The department shall conduct background screenings for all persons considered by the department for initial licensure or re-licensure as an out-of-home caregiver and all adult household members pursuant to Section 409.175, F.S. These screenings shall be completed before an applicant shall be licensed as an out-of-home caregiver and before any children are placed in the home . . . Failure to comply with any requirement for good moral character and background screening as described in this rule may be grounds for denial, suspension or revocation of an application or license. The supervising agency or the department has the discretion to request background screening for other individuals if there is reasonable belief that:

(a) The person may be a household member; or

(b) His or her presence in the foster home may adversely affect the health, safety and welfare of the children in the home; or

(c) The person has or may have unsupervised contact with the children.

* * *

(8) Persons who are currently licensed as out-of-home caregivers and any adult household members shall be re-screened at least annually as a part of the application for re-licensing.

19. Florida Administrative Code Rule 65C-13.027, titled "Changes During the Licensed Year" provides as follows:

(1) General Requirements.

(a) The licensed out-of-home caregiver shall report law enforcement involvement with any household member; law enforcement

involvement includes arrests, incidents of domestic violence, driving infractions and any local law enforcement response to the home over the course of the licensed year; a change in marital status; a change in household composition; a change of the physical address, changes in financial situation such as bankruptcy, repossessions and evictions, or a serious health issue such as a debilitating injury, or communicable disease regarding a household member, to the supervising agency within 48 hours. Failure to do so may be reason to suspend, deny or revoke a license if the non-reported situation threatens the safety of any child in care or results in the non-conformity with licensing requirements stated in this rule.

(b) The following occurrences shall be reported by the licensed out-of-home caregiver to the supervising agency upon occurrence:

1. Change in marital status;
2. Change of home telephone number;
3. Change of mailing address;
4. Change of employment or significant change in work schedule prior to the event when possible;
5. Change in household composition.

20. Florida Administrative Code Rule 65C-13.029, titled "Licensed Out-of-Home Team Member Roles," provides:

(5) Responsibilities of the Licensed Out-of-Home Caregivers to the Department and Supervising Agency.

* * *

(b) The licensed out-of-home caregivers are required to participate in re-licensing studies and in ongoing monitoring of their home, and must provide sufficient information for the department to verify compliance with all rules and regulations.

21. These rules, along with the Bilateral Agreement, required that all frequent visitors and household members undergo background screening, and that Petitioner notify the Department of changes in the household composition, and of any involvement a household member has had with law enforcement.

22. The documentary evidence establishes that Petitioner knew of the requirement to report residents or frequent visitors to Citrus. She admitted at the hearing that her daughter was a frequent visitor at the foster home, but she failed to report this fact to Citrus. As to her son, who was properly listed as a household member, Petitioner failed to notify Citrus of her son's arrest and involvement with law enforcement. Pursuant to the rules, it was Petitioner's duty to monitor her home and verify compliance with the rules. She failed to do so; therefore, her request for renewal of her foster home license should be denied.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby RECOMMENDED that the Department of Children and Families enter a final order finding that Petitioner violated section 409.175(9), Florida Statutes, and deny Petitioner's request to renew her foster home license.

DONE AND ENTERED this 27th day of October, 2011, in
Tallahassee, Leon County, Florida.



JESSICA E. VARN
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 27th day of October, 2011.

ENDNOTE

^{1/} Unless otherwise noted, all references in this Recommended
Order to Florida Statutes are to Florida Statutes (2011).

COPIES FURNISHED:

Jean-Claude Dugue, Esquire
7872 Northwest 201 Terrace
Hialeah, Florida 33015

Leslie Hinds St-Surin, Esquire
Department of Children and Families
401 Northwest 2nd Avenue, Suite N-1014
Miami, Florida 33128

David Wilkins, Secretary
Department of Children and Families
Building 1, Room 202
1317 Winewood Boulevard
Tallahassee, Florida 32399-0700

Drew Parker, General Counsel
Department of Children and Families
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.