

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN AND)
FAMILIES,)
)
Petitioner,)
)
vs.) Case No. 11-6420
)
CHARLES AND GLENDA WILLIAMS,)
)
Respondents.)
_____)

RECOMMENDED ORDER

On February 17 and May 22, 2012, an administrative hearing in this case was held by video teleconference in Fort Myers and Tallahassee, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Eugenie G. Rehak, Esquire
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For Respondents: John S. Sommer, Esquire
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STATEMENT OF THE ISSUE

The issue in this case is whether the Respondents' application for re-licensure of their therapeutic foster home should be approved.

PRELIMINARY STATEMENT

Through an Administrative Complaint dated November 4, 2011, the Department of Children and Families (Department) notified Charles and Glenda Williams (Respondents) that their application for re-licensure of their therapeutic foster home had been denied. The Respondents challenged the denial and requested an administrative hearing. On December 15, 2011, the Department forwarded the request to the Division of Administrative Hearings, which scheduled and conducted the proceeding.

The hearing was originally scheduled to occur on February 17, 2012, and the Respondents represented themselves during the portion of the hearing that took place on that date. The hearing was not concluded on February 17, 2012, and was adjourned to be completed later. The remainder of the hearing was scheduled and then continued at the request of the Respondents. On April 27, 2012, a Notice of Appearance was filed by counsel for the Respondents, who represented the Respondents through the completion of the hearing on May 22, 2012, and thereafter.

During the hearing, the Department presented the testimony of five witnesses and had Exhibits 1 through 19 admitted into evidence. The Respondents presented the testimony of nine witnesses and had Exhibits 1 and 3 through 6 admitted into evidence.

No transcript of the hearing was filed. Pursuant to the deadline established at the conclusion of the hearing, both parties filed proposed recommended orders that have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. The Respondents have operated a licensed foster home since 1994 and have operated a therapeutic foster home since 2011.

2. The Respondents' foster home was originally licensed under the supervision of Lee County Mental Health Center, which was the local agency responsible for placing children in the home.

3. In 2009, responsibility for supervision of the home was transferred to "Florida MENTOR" (MENTOR), which also assumed the responsibility for placement of children in the home.

4. The children placed in the Respondents' foster home have been between eight and 11 years of age. Children placed in therapeutic foster homes have significant special needs and can be emotionally unstable. A safe and supportive therapeutic environment is required for their protection.

5. The Respondents' license was valid through September 30, 2011. On August 3, 2011, the Respondents applied for renewal of the license.

6. Florida Administrative Code Rule 65C-13.027 requires that changes in a licensee's household composition or employment be reported within 48 hours of the event.

7. When the application was filed, the Respondents disclosed that their adult daughter and her three children had been residing with them for approximately three weeks. Prior to the application, the Respondents had not advised MENTOR that there had been any change in household composition.

8. Mr. Williams became unemployed in December 2010, but the Respondents failed to report the change in the employment prior to filing the application.

9. MENTOR was concerned about the financial stability of the household due to additional residents in the home and the reduction in income related to the loss of Mr. Williams' employment.

10. An applicant for re-licensure of a foster home is required to submit financial information sufficient to establish that the applicant has the resources required to provide a stable household and meet basic expenses.

11. The financial information initially submitted by the Respondents with the application for re-licensure was incomplete and did not appear to be an accurate reflection of household expenses. Attempts by MENTOR to obtain additional information were resisted by Ms. Williams.

12. MENTOR eventually determined that, although the household had sufficient income to support their own expenses, placement of a foster child into the Respondents' home would cause a financial hardship for the family.

13. Foster parents are permitted, with approval of the supervising agency, to add payments received to board a foster child to their income calculation, but the Respondents have not obtained such approval.

14. By the time of the hearing, the Williams' adult daughter and her children no longer resided in the home, but Mr. Williams remained unemployed and was selling scrap metal to obtain income. At the hearing, he testified that his scrap metal income had been declining as more unemployed people began to collect and resell scrap.

15. In September 2011, MENTOR completed the re-licensing study, a 24-page document that outlines the history of the foster home, including abuse reports and licensing deficiencies, and the efforts of the licensee to correct such issues.

16. Rule 65C-13.028(3)(i)2. requires that the re-licensing study include documentation related to the level of cooperation by the licensee with the case plans developed for the child placed in the foster home.

17. The re-licensing study documented MENTOR's concerns about the physical safety of children residing in the home and

the Respondents' willingness and ability to provide appropriate support to therapeutic foster children placed in the home.

18. During a significant period in 2011, the Respondents maintained a collection of junk metal and other debris in the yard of the foster home. The junk was apparently being collected by Mr. Williams for sale to scrap dealers.

19. Jodi Koch, a MENTOR therapist who was assigned to work with the children in the Respondents' home, testified at the hearing about her observations of conditions in the home and about her interactions with the Respondents.

20. In November 2010, Ms. Koch observed a child begin to play with a rusty machete that the child discovered in the Respondents' yard, and she so advised Ms. Williams, who expressed her displeasure that Ms. Koch had exceeded her authority as a therapist. Ms. Koch reported her observation to MENTOR personnel.

21. MENTOR officials, including the program director and re-licensing coordinator, discussed the unsafe conditions of the property with the Respondents. Suggestions that the Respondents relocate the debris or otherwise prevent access by children to the debris were initially ignored by the Respondents.

22. On May 2, 2011, MENTOR issued a Written Notice of Violation (Notice) to the Respondents, documenting the hazardous conditions of the property. The Notice was hand-delivered on

May 5, 2011, at which time the Respondents refused to read or sign the paper.

23. On May 6, 2011, the Lee County Code Enforcement Authority issued a nuisance citation against the Respondents for the accumulation of junk and debris on their property. The violation was cured on May 13, 2011, but, on June 1, 2011, the Lee County Code Enforcement Authority issued a second nuisance citation for the same violation. That violation was not resolved until November 2011, after the Lee County Code Enforcement Authority had prosecuted the violation through a hearing, and more than a year after Ms. Koch observed the child with the machete.

24. At the hearing, Ms. Williams asserted that Ms. Koch was a therapist and that she had exceeded her authority by reporting the observations of the property to the MENTOR officials, essentially the same position Ms. Williams asserted in 2011 when Ms. Koch reported the situation to MENTOR.

25. The MENTOR re-licensing study also documented the failure of the Respondents to cooperate in therapeutic plans developed for the children placed in the home and to supervise the children properly.

26. Ms. Williams often refused to cooperate with the therapeutic plans and goals Ms. Koch developed for the children in the Respondents' foster home. Ms. Williams apparently

concluded that she was better able to address the needs of a therapeutic foster child than was Ms. Koch, but the evidence failed to support such a conclusion.

27. Ms. Williams refused to implement standard behavioral therapies suggested by Ms. Koch and opined that they were a "waste of her time."

28. Ms. Williams refused to allow one foster child to have toys purchased for the child by Ms. Koch. Ms. Williams claimed that the child would have destroyed the toys, but Ms. Koch testified they had been purchased to allow the child to have her own possessions for the first time in the child's life and to develop a sense of responsibility.

29. The Respondents routinely put children to bed at an early hour as a means of discipline and refused to comply with Ms. Koch's direction to develop other disciplinary practices.

30. In one discussion with Ms. Koch at the home, Ms. Williams discussed the circumstances of one foster child in the presence of another foster child, violating the confidentiality of the children.

31. The Respondents failed to contact MENTOR staff to address behavioral issues exhibited by children placed in the home and instead called upon law enforcement authorities to respond when a child refused to comply with their directions.

32. The Respondents failed to supervise one child placed in their home sufficiently to prevent the child from accessing pay-per-view pornography on cable television, resulting in a charge in excess of \$700 on one bill.

33. It was clear, based on Ms. Williams' testimony and demeanor at the hearing, that Ms. Williams disliked Ms. Koch. Much of Ms. Williams' presentation of evidence during the February 17 portion of the hearing was directed towards discrediting MENTOR and Ms. Koch.

34. After completing the re-licensing study, MENTOR forwarded the application and study to the Department, which received the materials on October 5, 2011.

35. Notwithstanding the continuing problems between MENTOR and the Respondents, MENTOR recommended in the study that the Respondents' home be conditionally re-licensed. The conditions, essentially intended to increase the possibility that the Department would approve the application for re-licensure, were as follows:

1. Reduction in the licensed capacity from two therapeutic individuals to one therapeutic individual.
2. Unannounced visits to monitor the home in terms of food content, refrigerator temperature, client supervision and safety concerns.
3. Continuing monitoring of the foster parents ability to work in conjunction with

service providers regarding the best interests of the child.

4. Monitoring to ensure that the living situation of the additional four residents was resolved within six months.

36. Ms. Williams was dissatisfied with the results of the study, disagreed with the proposed conditions, and refused to accept them.

37. While MENTOR (as the supervising agency) was responsible for the evaluation of the application, the Department has the responsibility for the making the final determination regarding licensure or re-licensure of a foster home. The Department considered the MENTOR recommendation when making the licensing decision.

38. The primary focus of the Department's decision was whether the Respondents could provide an appropriate and safe environment for a therapeutic foster placement. The Department has no financial interest in the decision and had no direct contact with the Respondents.

39. As the regional licensing manager for the Department, Kristine Emden was tasked with the responsibility of reviewing the application and materials. Based on her review, Ms. Emden determined that the application should be denied.

40. Ms. Emden based her decision on the Respondents' lack of cooperation with therapeutic programs developed for the

children in their care, their failure to supervise children adequately or to maintain confidentiality regarding the children, and their lack of cooperation with the MENTOR personnel who attempted to resolve the identified deficiencies.

41. Additionally, Ms. Emden considered the Respondents' response to issues related to the hazardous conditions of the premises, the lack of financial resources to support a therapeutic foster placement in the home, and the rejection of conditions proposed by MENTOR in the study.

42. Ms. Emden was unable to identify any remedial measures that would alter the denial of the application for re-licensure.

43. The Respondents failed to offer credible evidence to establish that the Department's denial of the application was incorrect or that the application should otherwise be approved.

CONCLUSIONS OF LAW

44. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2011).^{1/}

45. The Department is the state agency charged with the responsibility for licensing therapeutic foster homes in the State of Florida. Rule 65C-13.035(1) states that the Department is the licensing authority for all family foster homes and has final authority for approval, denial, or suspension of any license. The Department may deny, suspend, or revoke a foster

home license for a violation of section 409.175, Fla. Stat., or a violation of the foster home licensing rules adopted by the Department. § 409.175(9), Fla. Stat.

46. The Department is proposing to deny the renewal of Respondents' foster home license. A foster home license is not a professional license and does not create a property right. § 409.175(2)(f), Fla. Stat. Accordingly, the Department 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. & 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). Once the Department has met its burden, the Respondents, as the applicants for re-licensure, bear the ultimate burden of establishing entitlement to the license sought. In this case, the Department met its burden. The Respondents did not.

47. The evidence established that the Respondents violated rule 65C-13.027(1)(a) and (b), which requires that the Respondents report any changes in the composition of the household or in the employment status of the licensee to the supervising agency within 48 hours of the change.

48. The evidence establishes that, by maintaining a substantial collection of metal junk and debris on the premises, the Respondents violated rule 65C-13.030(5)(c), which states as follows:

The exterior of the home and premises shall be free from objects, materials, and conditions which constitute a danger to children. All garbage and trash shall be covered and removed regularly. There shall not be large, potentially dangerous items stored in the safe outdoor play area such as old refrigerators, stacks of lumber and unregistered vehicles or boats.

49. Rule 65C-13.029(5) provides, in relevant part, as follows:

(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.

* * *

(t) Licensed out-of-home caregivers shall keep confidential all information about the child and the child's family. Discussing this information shall be limited to a departmental or agency staff member, Guardian Ad Litem, or other authorized professional working with the child.

* * *

(v) Licensed out-of-home caregivers are responsible for complying with all applicable laws, rules, regulations or ordinances of each governmental unit in which the home is located, including but not limited to those relating to Medicaid eligibility, fire safety, sanitation, health, safety, zoning, civil rights, employment and board rate eligibility.

50. The evidence establishes that the Respondents violated rule 65C-13.029(5) (b) by their lack of cooperation with MENTOR's efforts to monitor the home and by their failure to provide adequate information sufficient to permit an accurate determination of household financial stability.

51. The evidence establishes that the Respondents violated rule 65C-13.029(5) (c) by discussing personal information about a foster child residing in the home in the presence of another foster child in the home.

52. The evidence establishes that the Respondents violated rule 65C-13.029(5) (v) by maintaining a nuisance on the premises in violation of county regulations.

53. The evidence establishes that the Respondents violated rule 65C-13.030(4) (e), which states as follows:

A licensed out-of-home caregiver shall have a stable income sufficient to make timely payment for current shelter, food, utility costs, and other debts without relying on board payments unless the licensed out-of-home caregiver enters into an agreement with a lead agency to provide specialized care. Applicants shall have a source of income independent of child support or alimony.

54. Rule 65C-13.028(3)(i)2. requires that the re-licensing study include documentation related to the level of cooperation by the licensee with the case plans developed for the child placed in the foster home. In this case, the study contained the information required by the rule and reflected the failure of the Respondents to cooperate with therapeutic plans developed by Ms. Koch for children placed in the Respondents' home.

55. The Respondents have failed to establish that the Department's decision to deny the application was incorrect or that, despite the facts established at the hearing, their application should be approved.

56. The Respondents have suggested that the Department failed to comply with requirements set forth at rule 65C-13.035(3). According to the cited rule, the supervising agency and the licensee must cooperatively prepare a corrective action plan, and the licensee must be permitted an opportunity to implement the plan and correct violations "which do not pose an immediate threat to the health, safety or welfare of the children," prior to initiation of disciplinary action against a licensee for violations. However, under the facts of this case, such a process is not required.

57. Rule 65C-13.035(3)(e) states that such corrective action plans are not required when a licensee "has developed a pattern of deficiencies that has not been rectified by prior

attempts at corrective action." The evidence in this case clearly establishes that the Respondents, particularly Ms. Williams, resisted the efforts of Ms. Koch and MENTOR personnel to remedy deficiencies, to bring the Respondents into compliance with the requirements identified herein, and to prepare the Respondents' application for re-licensure. The Respondents presented no credible evidence that Ms. Williams was amenable to preparing a corrective action plan with MENTOR or to meeting the requirements set forth in such a plan.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Children and Families enter a final order denying the license application filed by the Respondents at issue in this proceeding.

DONE AND ENTERED this 19th day of July, 2012, in Tallahassee, Leon County, Florida.

William F. Quattlebaum

WILLIAM F. QUATTLEBAUM
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 19th day of July, 2012.

ENDNOTE

^{1/} References to Florida Statutes are to the 2011 version, 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.