

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

OUR HOUSE TOO,

Petitioner,

vs.

Case No. 14-2652

AGENCY FOR PERSONS WITH  
DISABILITIES,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on February 11, 2015, by way of video teleconference, with sites in Tallahassee and Orlando, Florida, before Administrative Law Judge R. Bruce McKibben of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Nancy Pico Campiglia, Esquire  
Your Towne Law, P.A.  
1720 South Orange Avenue, Suite 302  
Orlando, Florida 32806

For Respondent: Kurt E. Ahrendt, Esquire  
Agency for Persons with Disabilities  
4030 Esplanade Way, Suite 380  
Tallahassee, Florida 32399-0950

STATEMENT OF THE ISSUE

The issue in this case is whether Respondent, Agency for Persons with Disabilities ("APD" or the "Agency"), should have

approved the application submitted by Petitioner, Our House Too ("Our House"), seeking licensure as a residential facility (specifically, a group home facility).

PRELIMINARY STATEMENT

By letter dated May 19, 2014, the Agency notified Our House that its application for licensure as a group home facility had been denied. Petitioner timely filed a Request for Formal Administrative Hearing, which was forwarded to the Division of Administrative Hearings ("DOAH") and assigned to the undersigned administrative law judge. By agreement of the parties and order of the undersigned, the hearing was held at the place and date set forth above.

At the final hearing, Our House called two witnesses: Jane Milsap, certified home day care operator; and Amanda Bowden (nee Marchese), child protection investigator. Our House's Exhibits A through E were admitted into evidence. Our House requested that its Exhibit E be supplemented with four additional reference letters following the final hearing; the Department had no objection and the exhibit was supplemented as requested. The supplement was received February 11, 2015. The Agency called one witness: Joyce Leonard, supervisor for licensed or certified group homes. APD's Exhibits A and B were offered and received into evidence.

A Transcript of the final hearing was ordered and was filed at DOAH on March 11, 2015. By rule, the parties have 10 days from the date of final hearing to submit proposed recommended orders (PROs). The parties requested and were granted additional time. Each party filed a PRO and each was considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. Our House applied for a license to operate a residential facility/group home with a capacity of five residents in February 2014. A group home is a place where persons with certain medical, psychological, or other limiting conditions, may reside and have companion care and specified personal care assistance services. The facility proposed by Our House would provide respite care, supported living coaching, and transportation services. Milsap signed the application form on behalf of Our House.

2. Contained within the application was the following question: "Have you or anyone identified as a board member or party to ownership ever been identified as responsible for the abuse, neglect, or abandonment of a child or the abuse, neglect, or exploitation of a vulnerable adult?" Our House truthfully and accurately answered "No" to the question and submitted the application. The application was signed by Milsap and notarized on February 9, 2014.

3. Milsap also owns and operates a registered family day care home. By letter dated April 14, 2015, Milsap was notified that an investigation which had been conducted by the Department of Children and Families ("DCF") on March 5, 2014, at Ms. Milsap's family day care home was now complete.<sup>1/</sup> Milsap had been at her home when the investigation occurred, so she was already aware of the nature of the investigation and that it had occurred. By the time she received notice about the investigation being concluded, Ms. Milsap had already submitted her residential facility application to APD.

4. No evidence was presented to indicate that Milsap was ever notified by DCF concerning sanctions or penalties resulting from the investigation of her family day care home. Nor is there any evidence she received notification that would allow her to contest the findings set forth in the investigative report. She was simply notified that the investigation had been completed.

5. APD is the state agency responsible for, inter alia, licensing and monitoring residential facilities. By letter dated May 19, 2014, APD notified Ms. Milsap that the application for licensure as a group home facility was being denied because she was "responsible for the abuse, neglect, or abandonment of a child." The decision stemmed from the aforementioned

investigation conducted by DCF in March 2014 at Milsap's registered family day care home.

6. What DCF had concluded in its investigation (and ultimately reported to APD) was that on or about March 5, 2014, Ms. Milsap was serving as the owner and operator of Milsap Family Day Care Home. On that date, there were three children being cared for at the home. A child (identified herein as B.H.) sustained approximately 13 bites on his head, arms, and back while in Milsap's care. Milsap was in the kitchen preparing food for the children when the biting occurred. There was a half door separating the kitchen from the room where B.H. and two other children were playing. The entire playroom was not directly visible from the kitchen area. There were no adults physically inside the playroom when the biting occurred.

7. Milsap does not dispute that B.H. was bitten several times by one of the other children in the playroom. She maintains that her presence in the kitchen area was not improper as she did not know one of the children may have a propensity to bite and, therefore, she had no reason to be physically present in the playroom at all times. She maintains that she was appropriately caring for the children at all times and that the biting incident was unforeseen and was not preventable.

8. The biting incident was the first offense cited against Milsap's Family Day Care Home. Milsap has a reputation for

providing good, quality care to the children in her charge. After completing its investigation, DCF made a verified finding of "inadequate supervision," an offense under the general umbrella of abuse or neglect. DCF recommended remediation as the sanction for the incident, but there is no evidence as to whether remediation ever occurred. It is clear, however, that no action was taken against the Family Day Care Home license. In fact, the home's license was renewed by DCF at its next renewal date in August 2014. Also, the DCF investigation concluded that the risk to the child (B.H.) was "low" following the incident.

9. Nonetheless, APD considered the incident serious enough to warrant denial of Our House's application for licensure to operate a group home facility. The person who purportedly made the decision to deny the application, Tom Rice (licensing supervisor), did not testify at final hearing as to his reasoning or basis.

#### CONCLUSIONS OF LAW

10. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes (2014). Unless stated otherwise herein, all references to Florida Statutes shall be to the 2014 codification.

11. Section 393.0673(2), Florida Statutes, provides in relevant part as follows:

(2) The agency may deny an application for licensure submitted under s. 393.067 if:

\* \* \*

(b) The Department of Children and Families has verified that the applicant is responsible for the abuse, neglect, or abandonment of a child or the abuse, neglect, or exploitation of a vulnerable adult.  
(Emphasis added).

12. In the present case, DCF made a verified finding that Milsap was responsible for "inadequate supervision" of a child in her care.<sup>2/</sup> That finding, according to APD, constituted neglect on the part of Milsap because inadequate supervision falls under the heading of neglect within DCF's child maltreatment index which contains 20 to 30 different kinds of maltreatments, from the more serious offenses like sexual abuse to less serious things such as inadequate supervision.

13. Because there was a verified finding of "neglect," APD has the statutory authority to deny the application filed by Milsap for Our House. It must be noted that there is no statutory mandate that the license be denied, only that the authority to do so exists if APD wishes to exercise it.

14. There is insufficient evidence to make a determination of what factors - other than the verified finding of inadequate

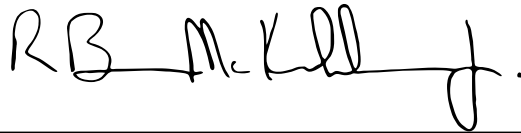
supervision - APD relied upon in making its decision. APD's denial of the application is legally permitted under the wording of the statute. Absent evidence that APD ignored any mitigating or aggravating factors, there is no basis to overturn the decision as it falls within APD's authority.

RECOMMENDATION

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

RECOMMENDED that a final order be entered by Respondent, Agency for Persons with Disabilities, upholding its denial of the licensure application filed by Petitioner, Our House Too.

DONE AND ENTERED this 23rd day of April, 2015 in Tallahassee, Leon County, Florida.



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R. BRUCE MCKIBBEN  
Administrative Law Judge  
Division of Administrative Hearings  
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1230 Apalachee Parkway  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 23rd day of April, 2015.



ENDNOTES

1/ The letter was apparently misdelivered to Milsap's neighbor's house, but Milsap eventually received it.

2/ The Department offered into evidence the summary of an investigative report that had been compiled by DCF. Our House objected to the summary on the basis of it being hearsay, but the ultimate relevant finding of the report, i.e., that the findings were "verified," was corroborated by other competent evidence.

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.