STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

GOD'S LITTLE BLESSINGS,

Petitioner,

vs. Case No. 15-3284

DEPARTMENT OF CHILDREN AND FAMILIES,

Respondent.
_____/

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case before the Division of Administrative Hearings by its designated Administrative Law Judge, Diane Cleavinger, on August 17, 2015, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Leslie Fudge, pro se
Apartment F-8
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Tallahassee, Florida 32304

For Respondent: Camille Larsen, Esquire
Assistant Northwest Regional Counsel
Department of Children and Families
2383 Phillips Road
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STATEMENT OF THE ISSUE

The issue in this proceeding is whether Petitioner's application for licensure as a child care facility should be granted.

PRELIMINARY STATEMENT

By letter dated May 1, 2015, Respondent, Department of Children and Families (Respondent, Department, or DCF), advised Petitioner, God's Little Blessings (Petitioner), that its application for licensure as a child care facility was denied. The denial was based on Petitioner's inability to meet the Department's licensure standards contained in section 402.310(1), Florida Statutes (2015). Specifically, the Department's decision was solely based on an abuse/neglect report against Petitioner. Petitioner disagreed with the denial and requested a formal hearing on May 18, 2015. Thereafter, the case was forwarded to the Division of Administrative Hearings.

At the hearing, Petitioner testified on her own behalf and called two additional witnesses. Petitioner did not offer any exhibits into evidence. Respondent presented the testimony of two witnesses and offered four exhibits into evidence numbered 1, 3, 5, and 7, which were admitted into evidence.

The final hearing Transcript was filed on August 31, 2015. After the hearing, Respondent filed a Proposed Recommended Order on September 14, 2015. Petitioner did not file a proposed recommended order.

FINDINGS OF FACT

1. Petitioner, God's Little Blessings, applied for licensure as a child care facility on March 23, 2015. The

application was completed and submitted by Leslie Fudge, the owner and proposed operator of the facility. The proposed director was Adrienne Wimas (spelling uncertain).

2. After review of the application, the Department denied Petitioner a child care facility license on May 1, 2015. The sole reason for the denial was contained in the Department's denial letter dated May 1, 2015. The letter stated:

> This letter will serve to advise you that your Application . . . is hereby denied based on review of your background screening, including the Florida Central Abuse Hotline Record Search.

No other reason for denial was stated in the Department's letter.

3. While not stating the specific facts regarding the background screening and abuse record search, the evidence demonstrated that the denial was based on one confirmed report of neglect (Abuse Report 2003-031849-01) against Ms. Fudge for inadequate supervision of resident R.H., and medical neglect of residents R.G. and J.D. Both incidents occurred at about the same time on or about March 5, 2003, while Ms. Fudge was employed at Tallahassee Development Center (Center). The Center provided residential and direct care to developmentally disabled residents at its facility. At the time, Ms. Fudge was employed as care staff responsible for providing direct one-to-one care to R.H. She was not assigned to provide care to R.G. Other than

Ms. Fudge, no witness with personal knowledge of these incidents testified at the hearing. Consequently, many of the statements contained in the 2003 abuse report remain hearsay which was not corroborated by any competent substantial evidence. Additionally, the age of the report, confusing allegations and lack of factual basis for its findings of inadequate supervision or medical neglect cause the abuse report to be unreliable and untrustworthy as evidence. As such, except as found below, the report by itself cannot form a basis for denial of Petitioner's application.

4. Ms. Fudge was the only person who testified at the hearing with personal knowledge about the events of March 5, 2003. She testified, and such testimony is accepted, that on or around March 5, 2003, she was not a shift supervisor, but was assigned as a direct care aide with "one-to-one" supervision of R.H. The testimonial evidence from Ms. Fudge and other employees of the Center during 2003 demonstrated that Tallahassee Developmental Center employees were trained that one-to-one supervision meant that "the person had always to be watched" and "you could never leave [the person] alone." There was no credible evidence that the person could not be alone in the restroom, that the staff assigned to watch the person had to be within arm's length of the resident, or that such observation was not varied according to the behavior plan for an individual

resident. Further, the testimonial evidence showed that staff and Ms. Fudge knew R.H. would run away usually to hide in a particular office, but occasionally with the police being called if R.H. were to leave the building and could not be found. The evidence did not demonstrate that R.H. behaviorally was aggressive or dangerous to others, but only that he would run away and hide. Finally, the testimonial evidence showed that the facility was in the process of trying to wean R.H. off of one-to-one supervision by implementing a plan of moving away from him and permitting him times of less supervision.

5. On March 5, 2003, the testimonial evidence demonstrated that Ms. Fudge, R.H., and other residents were gathered in the living room of the house where they lived. The phone in the adjoining office rang and Ms. Fudge answered it. While on the phone she could observe R.H. through the window between the rooms. At some point, R.H. was sent to go to the restroom. It was unclear who sent him. After finishing in the restroom, he did not return to the living room, but "left out of the bathroom" to another office, locked the door and hid behind the desk. Ms. Fudge could see him in the office and called a nurse to bring the key so that the office could be unlocked. At the time, R.H. was not in danger and there was no evidence that demonstrated he was in danger. There was some evidence that another staff person mistakenly may have believed that R.H. had left the building.

However, the better evidence showed that Ms. Fudge knew where R.H. was, could see R.H. in the room in which he was locked, and that he was not in danger at the time. Given R.H.'s behavior plan, none of these facts establish neglect by Ms. Fudge in the supervision of R.H.

6. There was no credible, non-hearsay evidence presented at hearing as to the abuse report's allegations regarding resident R.G. or J.D. As such, the Department's evidence consisted only of an old unreliable abuse report consisting of uncorroborated hearsay about an incident involving R.G. and perhaps J.D. and the testimony of the investigator who had no personal knowledge of the facts regarding the incident or the supervisory policies of the Center.

7. Given these facts, Respondent has failed to demonstrate that Ms. Fudge neglected, either in supervision or medically, residents who were in her care. In fact, the evidence showed that Petitioner has been caring for and/or supervising people for many years and has the character and capacity to continue to do so. Since the unproven abuse report was the only basis on which the Department based its decision to deny Petitioner's application, there was nothing in the record to support its determination that Petitioner lacked moral character or the ability to safely operate a child care facility. Therefore, Petitioner's application for such licensure should be granted.

CONCLUSIONS OF LAW

8. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. § 120.57, Fla. Stat. (2015).

9. The Department is the state agency charged with the responsibility of licensing child care facilities under chapter 402, Florida Statutes. The purpose of such licensure is to "protect, the health, safety, and well-being of all children in the state who are cared for at child care facilities." §§ 402.301-319, Fla. Stat. As a consequence, a child care license is a public trust and not a privilege. However, the Department cannot act unreasonably, arbitrarily, or capriciously in denying requests for child care licensure.

10. Section 402.302(1) and (2) broadly define the terms child care and child care facility. The sections state:

> (1) "Child care" means the care, protection, and supervision of a child, for a period of less than 24 hours a day on a regular basis, which supplements parental care, enrichment, and health supervision for the child, in accordance with his or her individual needs, and for which a payment, fee, or grant is made for care.
>
> (2) "Child care facility" includes any child care center or child care arrangement which provides child care for more than five children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for

> profit. The following are not included . . . .

Further, subsection (14) defines the term "screening" and states:

> (14) "Screening" means the act of assessing the background of child care personnel and volunteers and includes, but is not limited to, employment history checks, local criminal records checks through local law enforcement agencies, fingerprinting for all purposes and checks in this subsection, statewide criminal records checks through the Department of Law Enforcement, and federal criminal records checks through the Federal Bureau of Investigation.

11. Section 402.305 establishes the criteria for the Department's licensing standards. It states, in pertinent part:

> (1) LICENSING STANDARDS. The department shall establish licensing standards that each licensed child care facility must meet regardless of the origin or source of the fees used to operate the facility or the type of children served by the facility.
>
> * * *
>
> (c) The minimum standards for child care facilities shall be adopted in the rules of the department and shall address the areas delineated in this section.

12. Section 402.301 requires the Department to establish minimum standards that all child care facilities must meet. The statute provides the following:

> It is the legislative intent to protect the health, safety, and well-being of the children of the state and to promote their emotional and intellectual development and care. Toward that end:

> (1) It is the purpose of ss. 402.301-402.319 to establish statewide minimum standards for the care and protection of children in child care facilities, to ensure maintenance of these standards, and to approve county administration and enforcement to regulate conditions in such facilities through a program of licensing.
>
> (2) It is the intent of the Legislature that all owners, operators, and child care personnel shall be of good moral character. Minimum standards for childcare personnel shall include minimum requirements as to:
>
> (a) Good moral character based upon screening. This screening shall be conducted as provided in chapter 435, using level 2 standards set forth in that chapter.

See also, § 402.310, Fla. Stat.

13. The Department has adopted rules establishing the qualifications for licensure. See Fla. Admin. Code R. 65C-22.008. In general, these rules require an applicant to be able to safely care for children in a clean, healthy, and stable environment.

14. Florida has had a child/adult abuse reporting system since approximately 1971. Over the years, the system has gone through several statutory changes and used a variety of terminology to classify these reports. Relevant to this proceeding, in 1995, chapter 415, Florida Statutes (1995), provided for the child abuse reporting system in Florida. At the time, the system was known as the central abuse registry and tracking system. Under section 415.1075, Florida

Statutes (1995), a process for challenging certain classifications of abuse reports was provided. This process included a right to an administrative hearing since a person's substantial interest could be impacted by an abuse report. Chapter 95-228, Laws of Florida, (generally effective October 1, 1995) changed the name of the abuse registry to the central abuse hotline.

15. Around 1997, section 39.201(4)(a) [now 39.201(4)] and (e), Florida Statutes, continued to authorize the central abuse hotline for abuse or neglect related to children and established the uses of the information contained in the hotline. Section 39.201(4)(a) and (e) stated in part:

> (4)(a) The department shall establish a central abuse hotline to receive all reports made pursuant to this section . . . which any person may use to report known or suspected child abuse, abandonment, or neglect . . . .
>
> * * *
>
> (e) Information in the central abuse hotline may not be used for employment screening. Access to the information shall only be granted as set forth in s. 415.51.

16. In 1998, section 39.201(4)(e) was renumbered as subsection (6) and amended to state:

> (6) Information in the central abuse hotline may not be used for employment screening, except as provided in s. 39.202(2)(a) and (h). Information in the central abuse hotline and the department's automated abuse information system may be used by the

> department, its authorized agents or contract providers, the Department of Health, or county agencies as part of the licensure or registration process pursuant to ss. 402.301-402.319 and ss. 409.175- 409.176.

During these years chapter 415 provided similar abuse registry provisions for adults. On the adult protection side, section 415.1075 continued to provide the name-clearing hearing requirements for persons whose substantial interests were impacted by these reports. There was no such provision on the child protection side contained in chapter 39.

17. Chapter 2000-349, Laws of Florida, repealed section 415.1075. However, what is clear from these various amendments is that the right to an administrative name-clearing hearing on verified abuse reports was no longer available, since no substantial interest of a person involved in the report was impacted by the maintenance of such a report and the reports, by themselves, did not constitute competent evidence in an administrative hearing. If the reports were given such an effect, such reports would clearly involve a substantial interest of a licensee or potential licensee and would be subject to challenge under chapter 120. Thus, the use by the Department of "information" in the central abuse hotline is of limited value in the licensure process when that information is challenged and a formal administrative hearing is sought. In those cases, the Department must produce evidence of the underlying facts

contained in a confirmed report. See Springston v. Dep't of Child. and Fam. Servs., Case No. 02-1346 (Fla. DOAH Aug. 30, 2002; Fla. DCF Dec. 18, 2002).

18. In this case, the Department denied Petitioner's application based upon the information revealed in its background screening of Petitioner. The background screening document upon which the Department relied consisted of one report from the central abuse registry completed in 2003.

19. As an applicant, Petitioner must adhere to licensing standards established by Respondent under authority set forth in section 402.305 and has the burden to establish by a preponderance of the evidence entitlement to such license. See Fla. Dep't of Transp. v. J.W.C., Co., 396 So. 2d 778 (Fla. 1st DCA 1981). However, the Department has the burden to establish by a preponderance of the evidence that Petitioner was guilty of neglect as reflected in the central abuse registry report. Springston, supra.

20. To satisfy her burden, Petitioner was not required to address the constellation of factors relevant to licensure; rather, the scope of the hearing was limited to the particular concerns identified in the Department's denial letter. See M.H. v. Dep't of Child. & Fam. Servs., 977 So. 2d 755, 757-758 (Fla. 2d DCA 2008) (remanding with instructions to adopt the ALJ's Recommended Order, which correctly limited the scope of the

administrative hearing to the Department's reasons for denial); L.J. v. Dep't of Child. & Fams., Case No. 13-4666 (Fla. DOAH Aug. 25, 2014) (observing that applicant was required to address only those issues or concerns raised in the notice of intent to deny).

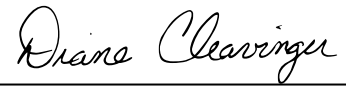
21. In this case, Respondent has failed to demonstrate that Ms. Fudge neglected persons placed in her care. Since the unproven abuse report was the only basis on which the Department based its decision to deny Petitioner's application, there was nothing in the record to support its determination that Petitioner lacked moral character or the ability to safely operate a child care facility. Further, the evidence showed that Petitioner has been caring for and/or supervising people for many years and has the character and capacity to continue to do so. Given these facts, Petitioner's application for licensure as a child care facility should be granted.

RECOMMENDATION

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

RECOMMENDED that Petitioner's application for licensure as a child care facility is granted.

DONE AND ENTERED this 2nd day of November, 2015, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
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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.