

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN AND
FAMILIES,

Petitioner,

vs.

Case No. 15-5639

WONDERLAND DAY CARE, INC.,

Respondent.

RECOMMENDED ORDER

Administrative Law Judge John D. C. Newton, II, of the Division of Administrative Hearings (DOAH) heard this case by video teleconference at locations in Tallahassee and Tampa, Florida, on February 2, 2016.

APPEARANCES

For Petitioner: Alicia V. Gonzalez, Esquire
Department of Children and Families
Suite 905
9393 North Florida Avenue
Tampa, Florida 33612-7907

For Respondent: Wanda Wilson
Wonderland Day Care, Inc.
914 North Castle Court
Tampa, Florida 33612

STATEMENT OF THE ISSUE

Should the Gold Seal Quality Care designation of Respondent, Wonderland Day Care, Inc. (Wonderland), be terminated under the

authority of section 402.281(4)(a), Florida Statutes (2015)^{1/} on account of a "class I violation?"

PRELIMINARY STATEMENT

By letter dated August 24, 2015, the Petitioner, Department of Children and Families (Department), advised Wonderland of its intent to terminate the facility's Gold Seal Quality Care designation because of an uncontested "class I violation" issued on April 20, 2015, by the Hillsborough County Child Care Licensing unit. Wonderland requested a hearing to contest the proposed termination. On October 7, 2015, the Department referred the matter to DOAH to conduct the hearing. The hearing was set for December 3, 2015. It was rescheduled to February 2, 2016, upon Wonderland's agreed-to motion to continue.

At the hearing, the Department presented testimony from Samantha Wass de Czege and Felicia Bonner. Department Exhibits 1 through 6 were admitted into evidence without objection. Wonderland owner Wanda Wilson testified. Wonderland did not offer exhibits. The hearing was recorded, but not transcribed. The Department filed a proposed recommended order. Wonderland did not.

FINDINGS OF FACT

1. Wonderland is a child care facility licensed by Hillsborough County. Ms. Wilson owns and operates Wonderland.

The Department awarded Wonderland a Gold Seal Quality Care designation effective May 9, 2011.

2. The Department's letter advising Wonderland that it had been awarded the Gold Seal designation also advised Wonderland that to maintain the Gold Seal it must not have a "class I violation." (Ex. 2). Wonderland's application for a sales and use tax exemption, signed by Ms. Wilson, stated that to qualify for the exemption the application must hold a "current Gold Seal Quality Care designation as provided in s. 402.281, F.S." (Ex. 3).

3. Section 402.281(4)(a) states that a child care provider must not have any "class I violations" in order to maintain its Gold Seal designation.

4. Ms. Wilson knew, or should have known, that a "class I violation" would result in the loss of Wonderland's Gold Seal designation.

5. On April 20, 2015, Hillsborough County's Children and Youth Services issued an Administrative Complaint (Complaint) against Wonderland proposing to administer a "class I violation" based upon a determination that Wonderland did not provide adequate supervision for the children. Specifically, the Complaint charged that on March 5, 2015, a four-year-old child left the facility and walked across the street without the staff's knowledge.

6. The Complaint told Ms. Wilson that Wonderland had a right to request an administrative hearing to challenge the Complaint.

7. Ms. Wilson chose not to challenge the Complaint. She elected for Wonderland to pay the proposed \$250.00 fine. Ms. Wilson did not think of the effect accepting the Complaint would have upon Wonderland's Gold Seal Quality Care designation. The Complaint did not advise of this collateral consequence. But, as found above, Ms. Wilson and Wonderland knew or should have known of it.

CONCLUSIONS OF LAW

8. 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.

9. The Legislature has charged the Department with the responsibility of licensing child care facilities, including administration of the Gold Seal Quality Care designation program. §§ 402.281 and 402.301-402.319, Fla. Stat.

10. As the Department acknowledges, it must prove its charges by clear and convincing evidence. Coke v. Dep't of Child. & Fam. Servs., 704 So. 2d 726 (Fla. 5th DCA 1998).

11. Section 402.281(4) (a) provides that in order to maintain a Gold Seal designation a child care provider must not have a "class I violation." The Department will terminate the

designation if the provider has a "class I violation." Fla. Admin. Code R. 65C-22.009(3)(b). "Class I violations [of a state or local licensing authority's standards] are the most serious in nature, pose an imminent threat to a child including abuse or neglect and which could or does result in death or serious harm to the health, safety or well-being of a child." Fla. Admin. Code R. 65C-22.010(1)(d)1.

12. The Department proved by clear and convincing evidence that Wonderland has a "class I violation." Wonderland is no longer qualified for a Gold Seal Quality Care designation.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Petitioner, Department of Children and Families, terminate the Gold Seal Quality Care designation of Respondent, Wonderland Day Care, Inc.

DONE AND ENTERED this 9th day of March, 2016, in Tallahassee, Leon County, Florida.



JOHN D. C. NEWTON, II
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of March, 2016.

ENDNOTE

^{1/} All citations to the Florida Statutes are to the 2015
compilation unless otherwise noted.

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.