

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN AND
FAMILIES,

Petitioner,

vs.

Case No. 18-5686

DAWNDRELL MARTIN AND MARY
HIGHSMITH,

Respondents.

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on February 25, 2019, in Marianna, Florida, before Lawrence P. Stevenson, a duly-designated Administrative Law Judge of the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Petitioner: Michael Andrew Lee, Esquire
Department of Children and
Families
2383 Phillips Road, Room 231
Tallahassee, Florida 32308

For Respondents: Dawndrell Martin, pro se
Mary Highsmith, pro se
3767 Little Zion Road
Sneads, Florida 32460

STATEMENT OF THE ISSUE

The issue in this case is whether Respondents' foster home license should be revoked for violating Florida Administrative Code Rule 65C-13.030(3).

PRELIMINARY STATEMENT

Respondents were notified by letter dated September 28, 2018, that the Department of Children and Families (the "Department") intended to revoke their foster home license. By submission received by the Department on October 19, 2018, Respondents notified the Department of their intent to contest the revocation and requested a formal administrative hearing. On October 26, 2018, the case was forwarded to DOAH for the assignment of an Administrative Law Judge and the conduct of a formal administrative hearing.

The Department's letter stated the following reasons for the revocation of Respondents' foster home license:

Your home was licensed as a foster home through Life Management Center on November 16, 2017. In July of 2018, the Department of Children and Families received allegations of abuse and conducted a child institutional investigation regarding your home, specifically case number 2018-612266. The investigation closed on August 28, 2018 and was verified for physical injury. Ms. Dawndrell Martin was identified as the Caregiver Responsible. As a component of that investigation, the Child Protection Team completed a medical exam on the foster child in care and made positive findings for physical abuse. Since that time, the

Department is aware that criminal charges have been brought against Ms. Martin.

The findings made by both the Department of Children and Families and the Child Protection Team are very concerning. As licensed foster parents and as a condition of your license, you both reviewed and signed the Partnership Plan Agreement on October 26, 2017. Specifically, per the Agreement, you agreed to provide the following:

4. Excellent parenting is a reasonable expectation of caregivers. Caregivers will provide and DCF, CBC, and agency staff will support excellent parenting. This requires a loving commitment to the child and the child's safety and well-being, appropriate supervision and positive methods of discipline, encouragement of the child's strengths, respect for the child's individuality and likes and dislikes, providing opportunities to develop the child's interests and skills, awareness of the impact of trauma on behavior, equal participation of the child in family life, involvement of the child with the community and a commitment to enable the child to lead a normal life.

The Department has determined that you have breached the Partnership Plan Agreement and have directly threatened the safety of the children that were in your care. As such, the Department can no longer assure the safety of the children in your care and intends to revoke your license. The Department has determined that this determination is appropriate based on Florida Statutes and the following rules from Florida Administrative Code:

F.A.C. 65C-13.030 Standards for
Licensed Out-of-Home Caregivers

(3) Discipline.

(a) Licensed out-of-home caregivers shall discipline children with kindness, consistency, and understanding, and with the purpose of helping the child develop responsibility and self-control.

(b) Licensed out-of-home caregivers shall use positive methods of discipline. Acceptable methods of discipline include: reinforcing acceptable behavior, expressing verbal disappointment of the child's behavior, loss of privileges, grounding, restricting the child to the house or yard, sending the child out of the room and away from the family activity, and redirecting the child's activity.

(c) Licensed out-of-home caregivers shall not subject children to cruel, severe, or unusual forms of discipline.

(d) Licensed out-of-home caregivers shall not use corporal punishments of any kind.

A Corrective Action Plan would not be an appropriate or effective method to correct the deficiencies that compromise the safety and well-being of a child placed in your home.

The case was originally scheduled for final hearing on January 18, 2019, in Tallahassee. The late date and choice of location were both due to the impacts of Hurricane Michael in the Marianna area. The Department's motion for continuance was

granted on January 9, 2019, and the case was rescheduled for February 25, 2019, in Marianna. The case was convened and completed on February 25, 2019.

At the hearing, the Department presented the testimony of Daniel Henry, a Department child protective investigator; Kimberly Dykes, an advanced registered nurse practitioner ("ARNP") on the Child Protection Team of the Gulf Coast Children's Advocacy Center (the "CPT"); Angela Griffin, an assistant team coordinator and forensic interviewer with the CPT; Sergeant Cheree Edwards, child abuse investigator for the Jackson County Sheriff's Office; Jeanne Durden, a foster home licensing specialist with Big Bend Community Based Care; and Regina Pleas, safety program manager for the Department's Northwest Region. The Department's Exhibits 1 through 6 were admitted into evidence.

Respondents presented the testimony of Precious Ingram, a case manager for Anchorage Children's Home in Jackson County; and Kristy Hancock, a licensing specialist with Life Management Center of Northwest Florida. Based upon advice from counsel in the pending criminal case against Ms. Martin, Respondents declined to testify at this hearing and asserted their Fifth Amendment right to avoid self-incrimination. Respondents' Exhibits 1 through 3 were admitted into evidence.

No Transcript of the hearing was ordered. Both parties timely filed their Proposed Recommended Orders on March 7, 2019. Both Proposed Recommended Orders have been carefully considered during the preparation of this Recommended Order.

All references to Florida Statutes are to the 2017 version unless indicated otherwise.

FINDINGS OF FACT

1. The Department is the state agency responsible for foster care licensing, pursuant to section 409.175, Florida Statutes, and Florida Administrative Code Chapter 65C-13.

2. Respondents are a mother, Mary Highsmith, and daughter, Dawndrell Martin, who reside together and obtained a joint license to provide foster care to children on November 16, 2017.

3. On July 16, 2018, the Department's Florida Abuse Hotline received an abuse report regarding B.H., a five-year-old female, who had been previously removed from her parents due to abuse, abandonment, or neglect and placed in the foster home of Respondents in November of 2017. The abuse report stated that B.H. had bruising on her back, face, and on top of her head. B.H. told the abuse reporter that "TT" had hit her with a brush or comb. "TT" was B.H.'s nickname for Ms. Martin.

4. Daniel Henry, a child protective investigator with the Department, was assigned to investigate the abuse report. He interviewed B.H., who told him that Ms. Martin had punished her

by hitting her with a comb, a switch, and a flip-flop and that Ms. Highsmith had repeatedly "thumped" her forehead with a flick of her finger. Mr. Henry interviewed the reporter of the abuse. He contacted local law enforcement to facilitate a joint investigation, contacted the Department's licensing staff, and interviewed Respondents. Based on B.H.'s statements, Mr. Henry immediately referred the case to the CPT.

5. The CPT is an independent entity created by statute and overseen by an interagency agreement between the Department of Children and Families and the Department of Health. Among other services, the CPT performs assessments that include medical evaluations, specialized clinical interviews, and forensic interviews. See § 39.303, Fla. Stat. In this case, B.H.'s physical injuries led the CPT to arrange a forensic interview and a medical evaluation of the child.

6. Kimberly Dykes is an ARNP working for the CPT. She has undergone specialized training in child maltreatment, including the nature, origin, manifestations, and symptoms of abuse and injuries inflicted upon minor children. Her training included recognizing the difference between accidental and intentional injuries. Ms. Dykes performed a medical examination and interviewed B.H. about the cause of her injuries.

7. Ms. Dykes concluded that B.H.'s wounds were consistent with inflicted injury, and were consistent with the causation

described by the child as "having been repeatedly struck with a comb and a switch and having been repeatedly thumped in the forehead."

8. Ms. Dykes testified that she spoke with the investigator for the Jackson County Sheriff's Office, Sergeant Cheree Edwards. Ms. Dykes stated that Sgt. Edwards provided her with the explanations that Respondents had offered for B.H.'s injuries. Ms. Dykes testified that she was able to medically rule out each of these explanations as lacking appropriate medical and testimonial support for their causation. Ms. Dykes further recommended that B.H. be removed from Respondents' home and placed in alternate custody.

9. Angela Griffin is a specialist with the CPT, who is certified to provide specialized clinical interviews and forensic interviews of minor children. Ms. Griffin conducted a forensic interview of B.H. Ms. Griffin testified as to the safeguards necessary to protect the integrity of the interview process with a child, such as building rapport, discussing the difference between telling the truth and telling a lie, and explaining the "rules of the room" to the child, including the fact that the interview will be recorded and that the child should make it known if she does not understand a question. Ms. Griffin stated that she employed all these safeguards during her interview with B.H.

10. During her interview with Ms. Griffin, B.H. described how her injuries were inflicted. This description was consistent with the story B.H. told to the abuse reporter, to Mr. Henry, and to Ms. Dykes.^{1/} B.H. told Ms. Griffin that Ms. Martin had hit her on the head, in the face, and on the back with a comb, a switch, and a flip-flop, and that Ms. Highsmith had thumped her forehead.

11. Upon concluding the forensic interview and medical evaluation, Ms. Griffin and Ms. Dykes provided recommendations for the care of B.H. They recommended that B.H. be removed immediately from the home of Respondents. They further recommended that any and all other children placed with Respondents be removed, and that no further children be placed with them. They recommended counseling for B.H.

12. After concluding his investigation and consulting with the CPT, Mr. Henry verified the allegations of physical abuse by Ms. Martin. He recommended that Respondents' foster home license be revoked and that no other children be allowed to reside with them.

13. At the hearing, Sgt. Edwards testified as to the investigation she conducted for the Jackson County Sheriff's Office. She stated that in cases of joint investigation by the Department and law enforcement, the CPT is critical in allowing a single point of contact with the minor victim. It is in the

best interest of the child to avoid multiple and redundant interviews that could cause repeated trauma. Following the joint investigation protocol, Sgt. Edwards did not conduct her own interview of B.H., but observed the recording of Ms. Griffin's interview with B.H. Sgt. Edwards also reviewed the notes made by Mr. Henry, the Department's investigator.

14. Sgt. Edwards interviewed Respondents and took repeated statements from them regarding possible origins of the injuries to B.H. She allowed Respondents to provide any and all evidence relevant to this matter. Sgt. Edwards testified that she contacted, or attempted to contact, every witness named by Respondents, including the day care teachers, and reviewed every piece of evidence presented by Respondents.

15. During her investigation, Sgt. Edwards discovered a hair comb at Respondents' residence. A photograph of the comb taken by law enforcement was presented as an exhibit in this proceeding. The photo shows a long-handled "rattail" comb. Sgt. Edwards determined this comb to match the item described by B.H. as the implement used by Ms. Martin to hit her on the head.

16. Ms. Dykes testified that the comb showed in the photograph could easily have been the cause of the injuries to the top of B.H.'s head.

17. Based on her independent investigation, Sgt. Edwards found probable cause to file criminal charges against Ms. Martin

for inflicting injury on B.H. At the time of the hearing, the criminal case was still pending.

18. At the hearing, the Department presented 13 photographs, taken by Ms. Griffin, of B.H.'s injuries. The photos detail multiple sources of trauma and bruising to B.H.'s face, head, back, eyes, neck, and scalp. None of the wounds appeared deep or serious, but did appear to be more severe than the usual bumps and bruises a parent expects from an active child. Ms. Dykes testified that the injuries in the photos were entirely consistent with B.H.'s statements that Ms. Martin caused them by hitting her with a comb, a switch, and a flip-flop.

19. Respondents did not testify. Through cross-examination and argument, Respondents were able to put forward some of their explanations for the injuries to B.H. They contended both that B.H. is inclined to self-harm and that the injuries must have been inflicted at Caverns Learning Center, the day care facility that reported the injuries to the Florida Abuse Hotline. They contended that the child may have hit her head on a dresser while bouncing on her bed. They stated that B.H.'s skin had been rubbed raw by a seat belt. Her scalp injuries may have been caused by a harsh shampoo used to treat for lice, or by self-pulling of her hair, or by undiagnosed folliculitis. Ms. Highsmith theorized that the entire case was

fabricated by authorities who did not like the fact that black foster parents were caring for white children.

20. Respondents argued that Mr. Henry did not pursue other theories as to the cause of the injuries. For example, he took employees of Caverns Learning Center at their word when they told him B.H. was injured when she arrived at the day care on the morning of July 16, 2018. They also questioned why approximately two hours passed between B.H.'s arrival at the day care and the call to the Florida Abuse Hotline.

21. Mr. Henry plausibly addressed both issues raised by Respondents. He testified that the Department bases its investigations on the identity of the alleged perpetrator. Because B.H. repeatedly and consistently identified Ms. Martin as the person who inflicted the injuries, Mr. Henry saw no reason to cast about for other suspects. Mr. Henry stated that he did not find it unusual for a busy day care to take a couple of hours to report to the abuse hotline.

22. Respondents did not themselves testify on the advice of their criminal defense attorney. Respondents did present the testimony of their licensing specialist, Kristy Hancock, and a "courtesy" dependency case manager, Precious Ingram.^{2/}

23. Ms. Hancock testified that she was the instructor for Respondents' foster home licensing class. Respondents were "very engaged" during the seven weeks of coursework and seemed

to understand the implications of being foster parents.

Ms. Hancock stated that she had visited Respondents' home and all seemed well.^{3/} Ms. Hancock also testified that she was aware of "issues" with Caverns Learning Center, but did not elaborate.

24. Ms. Ingram testified that Respondents were cooperative with her when she made her monthly home visits. She observed nothing that would indicate abuse or neglect. She never saw marks on B.H. resembling those in the photographs introduced by the Department. Ms. Ingram stated that she saw nothing out of the ordinary in Respondents' foster home and never had cause to raise concerns about the care of the children there.

25. Jeanne Durden is employed by Big Bend Community Based Care ("BBCBC") and is in charge of BBCBC's licensing responsibilities. BBCBC is a contractor retained by the Department to provide foster care services in Circuits 2 and 14. BBCBC manages foster care licensing for the cited jurisdictions.

26. Ms. Durden testified that it was her responsibility to provide quality assurance for all foster care licensing operations. BBCBC contracts with other entities to provide front line case management, and Ms. Durden provides oversight for those subcontractors.

27. Ms. Durden testified that she removed all of the minor children from Respondents' home immediately after reviewing the findings of the child protective investigator and the CPT.

28. Ms. Durden also recommended immediate termination and revocation of Respondents' foster home license. Ms. Durden explained that her recommendation was due to the nature and findings of the Department's verified child protection abuse report as well as the criminal charges filed against Ms. Martin. She noted that Department rules do not permit corporal punishment of any kind for foster children, because of the traumas these children have already experienced.

29. Ms. Durden did not believe that anything short of revocation was legally appropriate. She opined that mitigation was not possible based on the nature and cause of B.H.'s injuries.

30. Regina Pleas is safety program manager for the Department's Northwest Region. Among her duties is management of the Department's licensing operations. BBCBC has the contractual responsibility to recruit, retain, and manage foster homes, but the Department is ultimately responsible for all decisions and maintains final approval for BBCBC's licensing actions.

31. Ms. Pleas reviewed Ms. Durden's recommendation of revocation of Respondent's foster home license. After considering the nature and cause of the injuries inflicted, the consistency of B.H.'s statements, and the analysis of the CPT, Ms. Pleas concurred that revocation was necessary. In

considering the appropriateness of revocation, Ms. Pleas also took into account that Respondents were now subject to a verified abuse report, meaning that the Department could no longer place minor children in their care.

32. Ms. Pleas drafted the letter notifying Respondents of the Department's decision to revoke their foster home license. The letter, dated September 28, 2018, appropriately notified Respondents of the Department's intended action and of their due process rights in challenging the Department's preliminary decision.

CONCLUSIONS OF LAW

33. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to section 120.569 and 120.57(1), Florida Statutes.

34. The Department is the agency charged with the responsibility of licensing foster family homes in the State of Florida. Section 409.175 reads in pertinent part:

(2) As used in this section, the term:

* * *

(f) "License" means "license" as defined in s. 120.52(10). A license under this section is issued to a family foster home or other facility and is not a professional license of any individual. Receipt of a license under this section shall not create a property right in the recipient. A license

under this act is a public trust and a privilege, and is not an entitlement. This privilege must guide the finder of fact or trier of law at any administrative proceeding or court action initiated by the department.

* * *

(9) (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.

35. Pursuant to the authority granted by section 409.175(5), the Department has adopted chapter 65C-13, which governs foster home licensing.

36. Rule 65C-13.030, titled "Standards for Licensed Out-of-Home Caregivers,"^{4/} provides in relevant part:

(3) Discipline.

(a) Licensed out-of-home caregivers shall discipline children with kindness, consistency, and understanding, and with the purpose of helping the child develop responsibility and self-control.

(b) Licensed out-of-home caregivers shall use positive methods of discipline. Acceptable methods of discipline include: reinforcing acceptable behavior, expressing verbal disappointment of the child's behavior, loss of privileges, grounding, restricting the child to the house or yard, sending the child out of the room and away

from the family activity, and redirecting the child's activity.

(c) Licensed out-of-home caregivers shall not subject children to cruel, severe, or unusual forms of discipline.

(d) Licensed out-of-home caregivers shall not use corporal punishments of any kind

37. Rule 65C-13.035(4) provides as follows, in relevant part:

(4) Administrative Action for Existing Family Foster Homes.

(a) If licensing violations are found such that the child's physical, mental, or emotional health is or has been adversely impacted as a result of the violation or is in danger of being adversely impacted, the licensing counselor shall consult with his or her supervisor and the child's case manager for an immediate review of the safety of any children in the home and a call shall be made to the Abuse Hotline.

(b) If licensing violations are found which do not pose an immediate threat to the health, safety or welfare of the children, the supervising agency shall prepare a written corrective action plan to correct the deficiencies. The plan shall be developed by the supervising agency in conjunction with the licensed out-of-home caregivers and shall be approved by the Regional Licensing Authority.

38. The Department seeks revocation of Respondents' foster home license. As the party asserting the affirmative of an issue before this administrative tribunal, the Department has the burden of proof. Dep't of Transp. v. J.W.C. Co., 396 So. 2d

778 (Fla. 1st DCA 1981). In a typical professional licensure case, the Department's burden would be to show by clear and convincing evidence that Respondents' license should be revoked. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

39. However, in accordance with the definition of "license" contained in section 409.175(2)(f), the licensure status previously awarded to Respondents is not a professional license and does not create a property right. Therefore, the Department must establish facts which support its position by a preponderance of the evidence rather than by the clear and convincing standard normally imposed in professional licensure cases. See Dep't of Banking and Fin. v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996).

40. In the instant case, the Department demonstrated by a preponderance of the evidence that the foster home license of Respondents should be revoked. The Department's own investigation, as well as the findings of the CPT and the Jackson County Sheriff's Office, established that B.H. was abused in the home of Respondents and that the Department cannot safely place children in Respondents' home. Because the violation involved adverse impacts to the child's physical, mental, or emotional health, the lesser penalty of a written corrective action plan was not appropriate.

41. The undersigned acknowledges that Respondents were hamstrung in their defense by their understandable decision not to testify. Through argument, they were able to provide their explanations for B.H.'s injuries, but were not able to put on evidence that might have made those explanations appear at least plausible in light of the child's repeated statements accusing Ms. Martin.

42. Based on the Department's verified abuse report for inflicted injuries, the findings by the CPT, the results of the criminal investigation by the Jackson County Sheriff's Office, and the repeated and consistent statements of B.H., the Department's decision to revoke the license of Respondents is appropriate. The Department has satisfied its burden in this matter.

RECOMMENDATION

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

RECOMMENDED that a final order be entered by the Department of Children and Families revoking the foster home license of Respondents Dawndrell Martin and Mary Highsmith.

DONE AND ENTERED this 22nd day of March, 2019, in
Tallahassee, Leon County, Florida.

Lawrence P. Stevenson

LAWRENCE P. STEVENSON
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of March, 2019.

ENDNOTES

^{1/} Mr. Henry observed Ms. Griffin's interview with B.H. and confirmed that B.H.'s statements to Ms. Griffin were consistent with her prior statements to him.

^{2/} The children placed with Respondents were from Holmes County. Ms. Ingram, based in Jackson County, was assigned as a "courtesy" case manager to check on the children in the Jackson County foster home.

^{3/} The Department conceded that the children in Respondents' home were not neglected and appeared to be well cared for in terms of hygiene, grooming, clothing, and nutrition.

^{4/} "Licensed Out-of-Home Caregiver" means any person licensed under section 409.175 to provide 24-hour care, including foster parents. Fla. Admin. Code R. 65C-30.001(68).

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.