

On May 18, 1990, SRS, responding to a general complaint from a parent that her child was not "happy" going to the petitioner's day care, again visited the petitioner's day care. During the course of its inspection, the petitioner admitted that her brother, who had been convicted of sexual assault of a child, had been present frequently at the petitioner's home. The problem was that the petitioner had been caring full time for her brother's children, and her brother frequently was in the home to visit with them. The petitioner told SRS that she would no longer allow her brother in her home.

On June 20, 1990, SRS received a complaint from a public health nurse that a parent of a child at the petitioner's day care (who was a client of the public health nurse) was afraid to go to the petitioner's home because the petitioner's brother was there. The nurse stated that she had seen the petitioner's brother at the petitioner's home on June 14, 1990 at 2:00 p.m. Following this complaint, SRS notified the petitioner of its intent to revoke the petitioner's day care home registration effective July 29, 1990.

On July 18, 1990, the petitioner took advantage of the opportunity to meet with the Deputy Commissioner of SRS "to present her side of the story". At that meeting the petitioner did not dispute the allegations concerning her brother's presence at her home on the dates in question (as well as at other times). The petitioner stated, however,

that her brother had not been at her home since June 14, 1990, and that she had had her brother remove his children from her care as of June 30, 1990. The petitioner also stated, however, that her brother had subsequently come to the sidewalk outside her home and verbally harassed her. The petitioner said she was trying to get a court order to prevent this.

Following this meeting, SRS notified the petitioner that despite her "efforts to comply with the regulations", SRS did not feel "confident that your actions to date provide sufficient assurance that the regulation can be met so as not to present a risk of harm to children in your care".

At the fair hearing (held on August 1, 1990), the petitioner again did not dispute the Department's evidence.

She stated that she cannot prevent her brother from standing in front of her house and that she cannot afford to obtain a court order. She stated that her brother has told the neighbors that he wants to make sure he "closes her down". SRS stated that it was not its policy to provide individual day care operators the type of legal assistance that would be necessary to prevent the petitioner's brother from interfering with the operation of the petitioner's day care.

Based on the uncontroverted evidence it must be found that the presence of the petitioner's brother, even on the sidewalk in front of the petitioner's home, is disruptive

and frightening to at least some of the children and parents who use the petitioner's facility.

ORDER

The Department's decision is affirmed.

REASONS

33 V.S.A. § 2596(b) includes the following provisions:

(1) The commissioner shall issue regulations governing application for, and issuance, revocation, term and renewal of licenses and registration. In the regulations he may prescribe standards and conditions to be met, records to be kept and report to be filed. Licenses and registration shall be for a term of one year from issuance unless otherwise prescribed by regulation.

. . .

(3) A license or registration may be revoked for cause after hearing and may be suspended in situations which immediately imperil the health, safety or well-being of persons in the care of the licensee or registrant.

Section I(5) of the SRS Regulations for Family Day Care Homes provides as follows:

The following persons may not operate, reside at, be employed at or be present at a Family Day Care Home:

- a. persons convicted of fraud, or an offense involving violence or other bodily injury including, but not limited to abuse, neglect and/or sexual activity with a child. . .

In this case there is no dispute that the petitioner's brother has been convicted of sexual assault of a child. The issue is whether his continued presence on the sidewalk in front of the petitioner's house constitutes his being "present at a Family Day Care Home" within the meaning of

the above regulation. The hearing officer and the Board conclude that it does.

The petitioner admitted that her brother is deliberately trying to disrupt her day care and that she does not have the wherewithal to stop him. There is no question that his presence is disruptive and that it frightens at least some of the children and parents who use the petitioner's day care. While it is highly doubtful that the petitioner's brother could or would physically harm anyone, his presence directly outside the petitioner's facility is hardly conducive to "protecting and promoting the welfare of children". See 33 V.S.A. § 2751(3).

It must also be concluded that the Department has not abused its discretion in deciding to revoke the petitioner's registration rather than to provide the petitioner with legal assistance to prevent her brother from interfering with her day care operation. Although there is some sympathy for the petitioner's situation, it seems reasonable to expect her to shoulder whatever legal and financial burdens might be entailed in preventing a close family relative from threatening the welfare of children in her day care home.² If she cannot or will not do this, the Department is within its statutory discretion (i.e., there is "cause" under 33 V.S.A. § 2596(b)(3)) in revoking the petitioner's day care home registration. For these reasons, the Department's decision is affirmed.

FOOTNOTES

¹33 V.S.A. § 2752(3) provides:

A family day care home: is a day care facility which provides for care on a regular basis in the caregiver's own residence for not more than ten children at any one time. Of this number up to six children may be provided care on a full-time basis and the remainder on a part-time basis. For the purpose of this subdivision, care of a child on a part-time basis shall mean care of a school-age child for not more than four hours a day. These limits shall not include children who reside in the residence of the caregiver.

²For the record, the hearing officer was not impressed with the sincerity of the petitioner's efforts to obtain legal action against her brother.

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