

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 10,013
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Appeal of)
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INTRODUCTION

The petitioner appeals the decision by the Department of Social and Rehabilitation Services (SRS) to revoke her Family Day Care Home Registration based on her alleged violation of Department regulations.

FINDINGS OF FACT

1. In March of 1990, the petitioner submitted an application and various accompanying forms to SRS in order to become a registered day care provider. As part of her application, she signed a statement that she had read and understood the regulations for providers although she actually had not even seen the regulations as she got the application from a relative. Her application for registration was approved.

2. In March of 1989, about a year before her application, the petitioner was convicted under 13 V.S.A. § 2001 of "false personation," a felony involving fraud, by a Vermont District Court, arising from the unauthorized use of a credit card and writing bad checks in 1988. She was ordered

to make restitution and to perform some "community service" work which she undertook in September of 1990.

3. In order to pay for day care necessary to perform her community service work, the petitioner sought a day care subsidy from SRS. Her request for assistance brought the fact of her conviction to the Department's attention. She was told by the licensing director that the Department's regulations prohibit persons convicted of fraud from operating registered day care homes because voluntary truthfulness is essential to the program. This was apparently the first time the petitioner learned of the prohibition.

4. On September 7, 1990, the petitioner was notified by letter that SRS intended to revoke her registration because she had been convicted of fraud and was thus prohibited by SRS's regulations from operating a family day care home. At the petitioner's request, the Commissioner's representative met with her to allow her to respond to the proposed action. Following the meeting, the Commissioner reiterated SRS's position and stated that the regulations do not give the Commissioner the discretion to waive the regulation.

5. Upon learning that her registration was in question, the child care division of SRS removed all children it had placed in her care.

6. The petitioner made the following argument before

the Commissioner and the Board's hearing officer: Since her conviction, she has become a mother and, thus, a more mature and responsible person, she has had no further criminal involvement; and she has operated a day care without complaint for six months. She maintains that she has rehabilitated herself and should not be penalized for her past actions and should, instead, be supported in her efforts to get off welfare.

ORDER

The decision of the Department is affirmed.

REASONS

The Department of Social and Rehabilitation Services (SRS) is charged by law with the administration of family day care registration and licensing and is specifically empowered to make regulations necessary to the administration of these programs. 33 V.S.A. § 2595(3). Pursuant to its mandate, SRS has instituted a "registration" program for family day care which initially relies upon certain representations made by the registrant as to her health and background, and upon the attestations of three witnesses chosen by the registrant as to her character and fitness to care for children. Thereafter, the program relies upon the honesty and good faith of the registrant to read and follow the rules for family day care homes adopted by the Department. No monitoring or inspection is done of

the day care home unless or until a possible violation comes to SRS's attention. See generally "Regulations for Family Day Care Homes," September 1, 1989, Section V, pages 4-6.

Among the regulations adopted by the Department is a section covering staffing of day care homes. Within that section is a regulation which provides as follows:

5. 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; or

b. Persons who have had a report of abuse or neglect founded against them. Regulations for Family Day Care Homes, September 1, 1989, Section I, page 1.

The petitioner does not dispute the fact that she was convicted of fraud one year before she became a day care home registrant but asks instead that an exception be made for her because she has already been providing family day care with no complaints and has otherwise rehabilitated herself through her maturity and motherhood. However, the petitioner's more recent actions belie that allegation. Although it does not appear that the petitioner deliberately concealed the fact of her conviction, the concealment came about because the petitioner falsely attested that she had read the day care regulations at the time of her registration. It appears from the evidence that over six months later, when she applied for an SRS subsidy, she still

had not read the regulations because she was still unaware of the staffing regulation. The petitioner's cavalier disregard of her obligations as a registrant is just the kind of less-than-forthcoming behavior the regulations in this self-policing program seek to eliminate. It cannot, therefore, be found that the regulation excluding persons convicted of fraud is unjustly being applied in the petitioner's case.

The Department has a right to revoke a registration where a violation of the regulations occurs which could affect the safety, health or well-being of a child. See 3 V.S.A. § 814. As the petitioner's recent past conviction and behavior reflect poorly on her honesty, and, as children in a self-policing day care home could be endangered by the dishonesty of a caregiver, SRS has ample legal ground upon which to revoke the petitioner's registration.

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