

revoked because day care regulations prohibit persons convicted of felonies from residing at day care homes.

3. The petitioner does not deny that her husband was convicted of felonious aggravated assault on May 11, 1987 by a Vermont Court. She explains that as the assault did not involve children she did not think it disqualified her from operating a day care home.

4. Prior to a final decision in this matter, the petitioner presented convincing evidence to the Commissioner that her husband's crime--which involved abducting an acquaintance off the street and driving her to a remote area where he attempted to strangle her--was uncharacteristic for him and was quite likely the result of an isolated explosive disorder, brought on by complex focal seizures. The petitioner's husband's sentence was suspended and he was required to undergo medical treatment with anticonvulsants and to attend psychotherapy sessions which he has been doing since August of 1987. It is the opinion of both the psychiatrist who examined the petitioner's husband at sentencing and his current psychotherapist that it is not likely that the petitioner's husband will have repeated aggressive episodes so long as he is compliant with his medication.

5. The petitioner presented the testimony of four of her current customers (one of whom had known her husband for fifteen years), as well as her sister who lives upstairs,

which showed that the petitioner's husband is usually not at home during day care hours and, that when he is home, he interacts well with the children and has never threatened them or anyone else. The families are happy with the day care provided to them and are concerned that they will not be able to find alternatives due to its scarcity.

6. The Commissioner or his representatives considered the above information and determined on November 21, 1990, to proceed with the revocation because its regulations had been violated. The Department's Day Care Licensing Chief explained that while the petitioner's husband appears to do fine with children, there is no guarantee (in spite of a Court order to do so) that he will be compliant with his medication and it is possible that another event may occur which could endanger the safety and well-being of the children in her care.

ORDER

The Department's decision 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 have a person, namely her husband, living in her day care home who has been convicted of an offense involving violence. It appears from the evidence that the petitioner sincerely misunderstood the regulations on staffing and has been providing appropriate care for the children in her charge for almost a year. It also appears that her husband has not exhibited any violent behavior in the last three years and has behaved more than appropriately

with the children when he is with them. There is also persuasive evidence that the petitioner's husband was very likely influenced by a medical condition when the crime was committed and has been taking medication regularly for three years pursuant to a Court order to prevent a reoccurrence.

All of these factors diminish the likelihood that the children in the petitioner's care will be harmed by her husband. However, the facts remain that the crime committed by the petitioner was a serious unprovoked attack on another person which might have resulted in death or serious injury; that the attack occurred only three and a half years ago; and, that such an attack could occur again if the petitioner's husband fails to take his medication. Under these circumstances, it was reasonable for the Department to conclude that the children in the petitioner's care, who have some (although limited) exposure to her husband, are in a potentially dangerous situation in the petitioner's household. The petitioner is certainly in no position to guarantee that her husband will take his medicine, will not commit a similar violent act in the future (even if he does take his medicine), and would not direct violent acts against the children in her home. It must be concluded, therefore, that the Department has "cause" relating to the health, safety and well-being of the children sufficient for revoking the petitioner's registration. 33 V.S.A. § 2596(b)(3), Fair Hearings No. 6667, and 10,013.

The hearing officer is not unmindful of the hardships this revocation will cause for the petitioner and the families for whom she provides day care. The petitioner and the Department are encouraged to work out some way wherein the petitioner can continue her livelihood and the children can continue to be cared for.¹

FOOTNOTES

¹In the recommendation, it was represented to the petitioner that she might be able to become a day care registrant while providing services in another's home. It appears, however, that the regulations only allows a registrant to provide day care in her own home:

Definition: Family Day Care Home - The residence in which the registrant lives and provides children's day care services. Regulations for Family Day Care Home, Agency of Human Services, Department of Social and Rehabilitation Services, Division of Licensing and Registration, January 3, 1991.

The Department indicated to the petitioner that it was still possible for her to care for children in another registrant's home.

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