

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 11,292
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department of Social and Rehabilitation Services (SRS) to revoke her family day care home registration for alleged violations of the Department's regulations.

FINDINGS OF FACT

1. Since 1984, the petitioner has operated a home day care business which has been registered with SRS. As part of the original registration requirement and subsequent triannual renewals, the petitioner was provided with a copy of the Department's regulations and signed a statement attesting that she had read the regulations and had complied with them. The petitioner admits that she is familiar with the SRS day care home regulations.

2 In May of 1992, one of the petitioner's day care customers reported to SRS that she believed her five-year-old daughter had been inappropriately touched while being cared for by the petitioner. This report was investigated by a special SRS unit and a conclusion was reached by the Department that the petitioner's father had sexually abused the child while she was in the petitioner's day care home. A

"finding" was substantiated against the petitioner's father by SRS. Criminal proceedings were also initiated and are still in progress.

3. In the course of its investigation of the child's alleged abuse, the Department discovered that the petitioner's father had been convicted in 1984 of lewd and lascivious behavior with a child based on incidents which occurred in 1983. The arrest and conviction were widely published in town. He received a suspended sentence in connection with this conviction.

4. The petitioner was also interviewed in connection with the investigation. Following these interviews, SRS concluded that the petitioner knew that her father was convicted of child abuse and failed to protect children in her care from what she knew or should have known was threatened harm by allowing him to be present in the household. A separate "finding" of child abuse based on the above was made against the petitioner herself.

5. After discussing its findings with the petitioner, SRS determined to revoke her day care registration based on those two findings. The petitioner was so notified on June 25, 1992.

6. The petitioner appealed the determination and persuaded the investigative unit to reopen its "finding" that she herself had abused the children. Information subsequently obtained convinced the Department that her

father's attorney, mental health counselor, and probation officer had minimized the seriousness of his crime to her and had led her to believe that he most likely would not repeat his behavior. Based on this information, SRS expunged the finding made against the petitioner.

7. In spite of the expungement, SRS determined that the petitioner's registration should be revoked based on her violations of Department regulations prohibiting persons convicted of sex abuse crimes from being present during day care hours in the registered home. The Department determined that the violation was serious enough to justify revocation. The Department's decision to take the revocation action for the regulatory violation was based on the petitioner's lack of judgement in repeatedly allowing a person with a criminal conviction in her day care home, her continued lack of understanding of the impropriety of having allowed a convicted child abuser in the day care facility and her denial of the possibility that her father did abuse the child in her care. Based on the above, the Department expressed grave doubts that the children would be protected by the petitioner's promise to henceforth exclude her father from her household during day care hours and its ability to monitor and enforce that promise in a self-policing system.

8. The credible testimony of the petitioner indicated that she is close to her father, lives near him in the same town and was aware of his 1984 conviction and that it involved older children and sexual improprieties. It is

also clear that the petitioner was informed by his counselor, attorney and probation officer that her father's offense was minimal and did not appear to be of the type which would re-occur. Nevertheless, the petitioner warned her father, who was a frequent visitor to her home, not to get involved in anything with the day care children which could be misconstrued, and had a policy of never leaving him alone with the children. It does not appear that the petitioner was aware that her father, in fact, was at times alone with the children. The petitioner has banned her father from her house since the revocation decision, especially during day care hours. However, she does not believe it is likely that her father abused the child in question as he has a good relationship with children and has never abused her own children (aged thirteen and eight). Regardless of the outcome of the criminal action, she plans to continue to exclude her father from her day care and has written the parents of her day care children to inform them of this.

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 persons present in 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 facts unequivocally show that the petitioner over a period of eight years did allow her father, whom she knew had been convicted of an offense involving sexual activity with a child, to regularly and repeatedly visit her day care home and play with the children. Those facts are in direct violation of the above cited rule applicable to day care

homes. The Department has a right to revoke a registration where a violation of a regulation occurs which could affect the safety, health or well being of a child. See 3 V.S.A. § 814, Fair Hearing No. 10,013.

Although the petitioner has promised to keep her father from the house in the future, her poor judgment over the past eight years regarding the potential harm to the children in her care coupled with her knowledge that her actions violated the regulations and her current inability (perhaps understandable, in light of their close relationship) to view her father as a real danger to the children, reasonably generates concern on the part of SRS about her future behavior. As SRS is not in a position to closely monitor her future behavior due to the self-policing nature of the program, it cannot be concluded that its decision to revoke its approval of her day care home is unreasonable or arbitrary.

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