

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,713

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision by the Department of Social and Rehabilitative Services (SRS) denying her application for a family day care home registration certificate. The issue is whether the petitioner's conviction for fraud should prevent her from operating a day care home.

FINDINGS OF FACT

1. The petitioner lives with her two small children and her fiance. In her home, she cares for the children of two other families. On March 19, 1995, she applied for a family day care registration certificate which would allow her to care for more children.
2. As part of the petitioner's application, she certified that she had read the "Regulations for Family Day Care Homes" supplied by the Department and was in compliance with those regulations. Among those regulations was a provision stating that persons convicted of fraud may not operate a family day care home.
3. Following a routine police check performed by the Department it was discovered that the petitioner had the following record:
 - Convicted of retail theft and fined \$50 on March 23, 1987
 - Convicted of uttering bad checks and fined \$50 on April 6, 1987
 - Convicted of two counts of fraudulent use of a credit card and sentenced to 6-12 mos, which was suspended
on March 27, 1989
 - Convicted of probation violation on April 16, 1990

- Convicted of petty larceny on April 2, 1991 and

sentenced to 30 days.

- Complaint for petty larceny on March 27, 1995 was dismissed

4. The discovery of this record prompted the Department to deny the petitioner's day care home registration application. She was informed orally of this decision on May 25, 1995. She received a written denial on June 13, 1995, which cited only the two 1989 credit card convictions as the basis for the action. She was informed that this information showed that she had failed to meet the requirement of Section 1, Number 4 of the "Regulations for Family Day Care Homes" and the text of that regulation was set forth. The other convictions were not cited because they did not use the word fraud.

5. The petitioner does not dispute the accuracy of the police record obtained by the Department. She explained that the 1989 convictions took place in the context of an abusive relationship when she was immature and under a lot of stress. She acknowledges that it was wrong to misuse the credit cards. She asserts that the birth of her first child in December of 1989, and the start of her relationship with her current fiance in late 1990 has turned her life around and that she has learned from her mistakes. Nevertheless, she admits that she was subsequently convicted of shoplifting in April of 1990, after the birth of her son and again in April of 1991, after she met her current fiance.

6. Furthermore, the petitioner asserts that she is a good mother and babysitter and that her convictions for various economic crimes have no relation to her ability to care for children. She wants an opportunity to do something good for people but has had to turn families away because of her lack of a day care home registration certificate.

7. SRS has adopted this regulation because the day care home registration program relies upon the honesty of individuals to carry out its provisions. There is no monitoring for compliance with regulations unless a complaint is filed.⁽¹⁾

8. In addition, persons who are registered are eligible to bill SRS for services rendered to children who are eligible for subsidized day care and for food reimbursements through the Department of Health programs. Those bills are paid upon the certification of the provider. The Department must rely on the honest reporting of those providers in the expenditure of the Department's funds. It is the Department's judgment that persons who have fraud convictions are poor risks both for following regulations affecting the health and safety of children and for honestly filling out bills and reports for the Department.

9. The Department is unconvinced that the petitioner

has rehabilitated herself. It counters that in addition to the originally cited credit card fraud, the petitioner has shown a pattern and propensity to commit such crimes as recently as four years ago. Concern also exists over the petitioner's failure to reveal her convictions on her recent application. The Commissioner would be willing to consider rehabilitation at some time in the future but does not believe enough time has passed since her convictions to provide any assurance that she has abandoned her tendency to dishonesty. Such assurances would include the passage of a long period of time without criminal involvement, evidence of subsequent handled responsibility, such as employment, and support

from members of her community.

ORDER

The decision of the Department is affirmed.

REASONS

33 V.S.A. § 306 (b) (1) authorizes the Commissioner of Social and Rehabilitation Services to issue regulations and to prescribe standards governing the issuance of day care home registration certificates. Pursuant to this regulatory authority, the Department has promulgated the following relevant regulations:

SECTION I - ADMINISTRATION:

...

4. 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 unlawful sexual activity or another bodily injury including, but not limited to abuse, neglect and/or sexual activity with a child;

Regulations for Family Day Care Homes

Effective April 1, 1993

The petitioner was, without dispute, convicted of fraud in 1989 and is in violation of the regulation. Unless she can show that the regulation is unreasonable or that she has rehabilitated herself, she cannot avoid its operation.

The petitioner argues that fraudulent behavior does not impact on anyone's ability to care for children. While that may be true, the day care registration program requires adherence to certain standards which are not ordinarily required of parents caring for their own children. It requires taking certain steps to insure the safety of children who are cared for as a business venture, including safe maintenance of the physical facility, record keeping, sanitary procedures, wholesome interactions with children and a myriad of other procedures set forth in thirteen pages of regulations. See "Regulations", *supra*. The Department has a legitimate concern in seeing that these regulations are followed. One method it has chosen to insure this compliance is the elimination from consideration of persons who have convictions for fraud. Such a method is surely far from perfect since many people who are untrustworthy do not have fraud convictions. However, it cannot be found that the Department's selection of this method is unreasonable since it has the effect of eliminating persons whose dishonest behavior was so unquestionably grave that it led to criminal prosecution.

The Commissioner (through his representative, the chief of the children's day care unit) has indicated that he might be willing to grant a waiver to a person who can show that a fraud conviction in the past is not reflective of the applicant's current character. He was not convinced at present that the petitioner had

shown that she had become a trustworthy person. The petitioner could point to nothing which showed he abused his discretion in this regard. The repeated instances of behavior involving dishonesty subsequent to March of 1989, coupled with the petitioner's dishonesty on her application, are ample grounds for the Commissioner's refusal to waive the fraud prohibition in this situation. As the Department's denial was in accord with its regulations and as those regulations appear to be valid both as written and as applied to the petitioner, the Board is bound to affirm its decision. 3 V.S.A. 3091(d) and Fair Hearing Rule No. 17.

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1. In fact, a complaint was filed against the petitioner during this process stating that she was caring for children from more than two families, but that report could not be confirmed.