

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,805

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision by the Department of Social and Rehabilitation Services to revoke her family day care license based upon her alleged violation of rules prohibiting substantiated child abusers from being present in day care facilities.

FINDINGS OF FACT

1. The petitioner has had a day care license for over twenty years. She has conducted her day care business in her home which is a trailer located in a trailer park. She initially had a license to care for children twenty-four hours per day but she now is licensed for twelve hours per day. The day care facility is the sole source of her income. The petitioner presented testimonials from two parents that her care of their children has been appropriate and loving and that they felt their children were safe in her home.
2. In early 1980, the petitioner's son had a substantiation of abuse of a child entered against him in the SRS registry and in the late 1980's, a second substantiation of abuse of a child was entered against him. The petitioner's son has taken no steps to legally expunge those findings. In 1992 or 1993, his stepson was removed from his care due to his abuse and was placed in foster care with SRS. Thereafter, two more of his children were taken from him pursuant to Court order for protective reasons due to their abuse by a friend of his but were recently returned to his custody.
3. In July of 1990, it came to the SRS licensing division's attention that the petitioner's son had these "findings" of child abuse substantiated against him and entered in the registry. Although SRS understood that the petitioner's son did not live with her, the licensors were aware that he lived nearby in another trailer in the same trailer park. Because they were concerned about his proximity, two SRS employees went to discuss this concern with the petitioner. It was explained to her at that time that her son could not be present in her day care facility (her entire trailer) or she would risk losing her license.

The petitioner said she understood and willingly signed an agreement dated July 26, 1990, acknowledging that she understood that her son could not be present at the day care facility due to a finding of child abuse against him. There were no further discussions about this requirement in 1991 and 1992.

4. On April 21, 1993, the petitioner was visited by an SRS licensor with regard to the renewal of the license. At that point, the petitioner's son was discussed again. The worker asked her if he had taken any action to expunge the finding. The petitioner told her that he had and that she had a record from a mental health worker saying that he had almost completed the required "mental health" courses to have the finding removed. It was the petitioner's belief that her son could now be present at her day care facility. The licensor looked at the letter which indicated that the petitioner had not completed a course of treatment and had not been in treatment for some time. The worker explained to the petitioner that taking "mental health" courses was not the same as seeking a legal expungement and that her son still could not come on to her premises without jeopardizing her license unless a legal expungement occurred. The petitioner indicated that her confusion about this had been cleared up.

5. On May 27, 1994, the petitioner was mailed a license renewal which limited her period of care to twelve hours per day (6:00 a.m. to 6:00 p.m.), seven days per week. That license contained a written condition that the petitioner "maintain compliance to Agreement dated 7/26/90."

6. On January 16, 1995, the day care licensor made an unannounced visit to the petitioner's day care facility during the hours of operation. While she was inside the facility, the licensor saw a man walking in the hallway of the facility, well out of sight of the petitioner, who was in another part of the facility. One of the petitioner's aides told the licensor it was the petitioner's son. The petitioner was confronted with this information and agreed that her son was in the facility. She also told the licensor that he only came by once per week to pick up his mail and was never there for more than ten minutes.

7. The petitioner's license was due to expire on June 1, 1995. On July 7, 1995, SRS mailed the petitioner a letter stating that it intended both to revoke the petitioner's current license and to deny her application for a new license because her son had been present in the facility in spite of her knowledge that he should not have been there. The petitioner appealed that decision and a review was held by the Commissioner who upheld the initial decision to revoke, in a letter dated August 15, 1995, because her son had been in the facility, had not sought an expungement in spite of some positive rehabilitation attempts and because the petitioner "either through unwillingness to accept the limitation [on her son's presence in her home] or through inability to understand the conditions imposed" could not "be relied on to carry out the terms and conditions of" her license.

8. At the hearing, the Commissioner's representative emphasized that the decision to revoke the license was based on SRS' serious concerns about the petitioner's lack of judgment which had placed the children in her care at risk to their health, safety or welfare by exposing them to a person who had a history of abusing small children. Even an exposure of a small amount of time was of concern because children can be victimized quickly.

9. The petitioner does not dispute the conditions put on her license and does not claim ignorance of, or a lack of understanding of the Department's regulation. She also does not claim that her son sought an expungement of the finding against him. Rather she claims that she had asked her son not to come to the facility but he persisted in picking up his mail at her home. He was on the premises for a few minutes each week over about a two month time span in December of 1994 and January of 1995. When he came

to the facility, she told him to leave immediately. She believed he came on two other occasions after January of 1995. She stated that she was confused about the appropriateness of some of his visits to her home because they occurred based on SRS sanctioned visitations between her own husband and her son's children, at which times her son was present. She felt if SRS had agreed to the visitations in those instances it must be all right for him to come to her facility although she agreed that no one ever said it was appropriate for him to visit the day care facility. The petitioner's testimony is found to be credible.

10. The petitioner's son has done considerable counseling about parenting and anger management during the course of the SRS protective proceedings regarding his children. He understands that his mother's license is conditioned upon his staying away from her facility. However, it is his belief that completion of these behavior modification courses, apparently done in connection with and under the supervision of the protective custody division of SRS, means he has been cleared to come to his mother's day care. However, he could point to no specific information explicitly informing him of that fact.

ORDER

The decision of the Department is affirmed.

REASONS

33 V.S.A. § 306(b)(3) and 3 V.S.A. § 814 authorize the Commissioner of Social and Rehabilitation Services to issue licenses for day care facilities, promulgate regulations applicable to those facilities, and to deny or terminate licenses for "cause after hearing". Among the regulations promulgated by the Commissioner are the following:

Section C - Staff Requirements

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14. The following persons may not operate, be employed by, reside at or be present in a day care facility:

...

c. A person who has been found by a mandated protection agency to have physically or mentally abused or neglected another person.

Children's Day Care Licensing Regulations for Early Childhood Programs.

The petitioner's son has been found by SRS, a mandated protection agency, to have physically abused two or more children. By the petitioner's own admission, he has been present at her facility on at least ten occasions since December of 1994. It must be concluded, that the above licensing regulation has been violated and violated more than once by the petitioner.

The sole issue remaining in this matter is whether the Commissioner of the Department of Social and Rehabilitation Services abused his discretion in determining that the violation of this regulation was cause for revocation of the day care license. The evidence indicates that he had ample reason to make

this decision: the violation was repeated, it exposed the children in the petitioner's care to serious risk of harm, and it occurred in spite of clear directives from the licensing agency to the petitioner over the course of several years not to allow her son in her facility. It was not unreasonable for the Commissioner to conclude that the petitioner either was unwilling or unable to understand the restriction and, therefore, lacked the judgment to continue to hold a day care license. The loss of the petitioner's day care license after all of her years of service is regrettable, but the Department's obligation to protect children justifies the action it is proposing.

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