STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 15,900
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals the decision by the Department of Social and Rehabilitation Services (SRS) denying her application for a Family Day Care Home Registration Certificate. The issue is whether the Department abused its discretion in denying the petitioner a registration.

The petitioner was the subject of Fair Hearing No. 14,993, dated August 27, 1997, in which the Board affirmed the Department's decision to revoke the petitioner's day care home registration. The petitioner was also the subject of Fair Hearing No. 15,232, dated January 16, 1998, in which the Board affirmed the Department's decision denying the petitioner's application for a foster home license based in part on the same facts as found in Fair Hearing No. 14,993. These decisions are incorporated by reference herein.

At some time following those decisions the petitioner filed another application with the Department for a registration to operate a family day care in her home. On March 11, 1999, the Department notified the petitioner that it

was denying that application based on the findings of the Board in Fair Hearing Nos. 14,993 and 15,232. That decision was upheld by a Commissioner's Review on April 26, 1999. The petitioner appealed this decision to the Human Services Board.

A hearing was convened on May 7, 1999, at which time the parties agreed to resubmit the matter to the Commissioner to review additional evidence in the form of testimonials regarding Mr. Cope's rehabilitation and the petitioner's apparent change of position regarding the wearing of religious symbols in her home.

On July 13, 1999, the Commissioner of SRS mailed the petitioner a letter affirming the Department's decision to deny her a day care home registration. A hearing in the matter was held on October 6, 1999.

FINDINGS OF FACT

1. At the hearing the petitioner did not dispute the information regarding Mr. Cope contained in the most recent Commissioner's Review letter. She referred the hearing officer to the letters referred to in the Commissioner's Review that were submitted on Mr. Cope's behalf from friends and professional colleagues of his in the community; and the petitioner reiterated her position that Mr. Cope has

rehabilitated himself since his personal and legal troubles earlier this decade.

2. As for her tolerance of religious beliefs different from hers, the petitioner affirmed that she would run a Christian day care but that she would not refuse services to any child or family based on their religious beliefs.

3. When asked about the incident regarding the child with the Buddha necklace the petitioner admitted that she had made a mistake in believing she was equipped to handle that child's behavioral needs. When pressed about this incident, however, the petitioner became more cryptic in explaining her beliefs about the wearing of non-Christian religious symbols in her home. She stated that she would allow the wearing of such a symbol but that she would suspect such a symbol as a cause of any behavioral or emotional problems a child wearing it might be experiencing in her home. She stated that in that case she would counsel the child and his family to persuade them to remove the symbol. She was evasive as to what she would do if the family refused.

4. Several individuals giving references and interviewed by the Department in this case described the petitioner as a loving and attentive caregiver to children; but at least one reference, a social worker, expressed concern that the

petitioner "crammed" her religious beliefs onto children in her care.

5. Unfortunately, the petitioner's testimony and demeanor at the hearing did little to dispel the concern whether she is capable of accepting and tolerating the expression of religious beliefs in her home that are different than hers (see supra).

ORDER

The Department's decision is affirmed.

REASONS

As for Mr. Cope's rehabilitation, the hearing officer remains impressed by his well-supported ability to work effectively with children and the facts that he has been able to lead a moral and productive life and earn the respect of his community since his legal problems in the early 1990s.

As noted in the Board's earlier decisions, however, the Department's Family Day Care Home Regulations preclude the presence in a day care home of any person "convicted of fraud, felony or an offense involving violence. . ." (See Id., Section I, Number 4.) Therefore, granting the petitioner a

registration at this time would necessarily involve a "waiver" by the Department of this provision.

In its Commissioner's Review letter the Department was clear that it remains concerned by the fact that Mr. Cope has never availed himself of "professional treatment" for his earlier drug abuse and problems with anger control. While it is certainly arguable that years of good behavior can demonstrate that there is no longer a need for such treatment, given the seriousness of Mr. Cope's criminal record, it cannot be concluded that it is an abuse of discretion for the Department to insist on some form of expert evidence of Mr. Cope's reformation.[1]

The problem concerning the petitioner's respect for the religious beliefs of others remains even more problematic. As also noted by the Board in its prior decisions, the Department's Day Care Home Regulations require a caregiver to "treat children with respect". (See Id., Section III, Number 2.) While the petitioner can certainly argue that she is entitled to follow her religious beliefs in her home, she appears unable to yield if her beliefs might conflict with and

[1]One of the testimonials in Mr. Cope's behalf was from a licensed social worker. However, this individual made it clear that he was writing as a friend, and not as Mr. Cope's therapist.

impinge upon the beliefs and practices of families of children in her care.

Although a reasonable policy argument can be made that individuals should be allowed to operate day care facilities that cater only to families with like-minded religious beliefs, a family day care home is clearly a "public accommodation" within the meaning of the law (see 9 V.S.A. § 4502). And although the petitioner states that she would not refuse to provide care for any child on the basis of that child's family's religious beliefs, her testimony regarding the incident involving the child with the Buddha necklace illustrates her seeming inability to understand and recognize when the expression of her religious beliefs might infringe upon the expression by others of their beliefs and practices.

It is clear that the petitioner is a sincere and caring individual, and that she would not knowingly be disrespectful to any child or family. Unfortunately, however, "respect" is in the eye of the beholder. Given the petitioner's admission that she believes behavioral problems can be caused by the wearing of non-Christian religious symbols, and that she would counsel families of difficult children to remove those symbols, it cannot be concluded that the Department abused its

discretion in denying the petitioner’s registration due to her inability to "treat children with resect".

For the above reasons, the Department’s decision in this matter is affirmed.

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