

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 18,662
)
Appeal of)
)

INTRODUCTION

The petitioner appeals a decision of the Department of Social and Rehabilitation Services (SRS) suspending and revoking her family day care home registration certificate. The issue is whether the petitioner violated the rules on supervision and safety of children and whether SRS abused its discretion in determining to suspend and revoke the petitioner's registration based on these violations.

FINDINGS OF FACT

1. Prior to the events described below the petitioner had been a registered day care provider since November 2001.

2. In February 2002, the Department received a complaint that prohibited persons were present at the petitioner's home. Following an investigation the Department notified the petitioner that one of her employees, C.S., was in the Department's child abuse registry as having committed child abuse. In a notice dated March 12, 2002, the Department informed the petitioner that C.S. could not be present in her

home.¹ The petitioner signed a statement at that time certifying that she understood the violation and that she would comply with the Department's directive.

3. In October 2002, during a routine inspection of the petitioner's facility, SRS noted uncovered electrical outlets and exposed cords. The petitioner signed a statement acknowledging these violations and agreeing to correct them.

4. In a follow-up inspection in November 2002, SRS found the electrical outlets and cords still unprotected and noted that the petitioner did not properly supervise children on a walk outside the facility. The petitioner again signed an acknowledgement of and agreement to correct these violations.

5. In December 2002 the Department received a complaint that the petitioner's facility was over numbers for children in the petitioner's care. An investigation did not reveal a violation, but the investigator discussed the allegation with the petitioner and the petitioner signed an agreement to abide by the regulatory numbers of children. A follow-up inspection in January 2003 indicated no violations at the petitioner's facility.

¹ Another adult with a criminal record was also prohibited from being in the petitioner's facility.

6. In June 2003, following a complaint, an SRS inspection of the petitioner's facility found that she was in violation of the allowable numbers of children. Again, the petitioner, following a discussion with the investigator, agreed to comply with the regulations.

7. On August 13, 2003, again following a complaint, an inspection revealed that the petitioner was over the allowable number of children. After the petitioner expressed some confusion regarding special "summer options", she again signed a statement agreeing to comply.

8. The Department's chief of licensing credibly testified at the hearing that on August 21, 2003, he had a phone conversation with the petitioner regarding the status of C.S. The petitioner told him that the criminal charges against C.S. had been dropped. The licensor told the petitioner that C.S. was still in the SRS child abuse registry and that unless and until she requested and was granted an expungement, she was still prohibited from being in the petitioner's day care. The petitioner gave no indication at the time that she was confused about C.S.'s status.

9. The SRS investigator returned to the petitioner's home on August 25, 2003 to conduct a follow-up inspection. When she arrived she saw through the window that C.S. was in

the facility and abruptly left the room when the doorbell rang. Once inside, the investigator asked the petitioner if C.S. was present. When the petitioner denied she was, the investigator asked to search the facility, and the petitioner agreed. The investigator found C.S. hiding in a bathroom adjoining a bedroom where children were napping. The petitioner then told the investigator that C.S. was providing care for the children because a regular employee had gone home sick, and she had too many children in the facility to care for by herself.

10. On August 28 or 29, 2003 the Department's licensing chief personally delivered a notice to the petitioner suspending and terminating her day care registration effective immediately.

11. At a commissioner's review hearing on November 11, 2003 the petitioner alleged, for the first time, that her husband had been present in the facility on August 25 and was sleeping downstairs. The petitioner alleged that she had misunderstood that C.S. could not visit her facility if there was another adult present.

12. At the hearing in this matter, held on December 4, 2003, the petitioner alleged that C.S. was in her facility on August 25 to do her laundry after returning from a trip, and

that the petitioner had asked her to come over so she could "fire" her. The petitioner testified that when the investigator first came into her home that day she had "forgotten" that C.S. was there. She testified that she also "forgot" to tell the investigator that her husband was sleeping downstairs. The petitioner also testified that she does not remember her phone conversation with the licensing chief on August 21, 2003. The petitioner's testimony, virtually in its entirety, was deemed highly incredible.

ORDER

The decision of the Department suspending and revoking the petitioner's family day care registration is affirmed.

REASONS

The Commissioner of the Department of Social and Rehabilitation Services has the authority to adopt rules and regulations governing the day care registration program, including standards to be met and conditions for revocation of the Day Care Home Certificate. 33 V.S.A § 306(b)(1). Those rules and regulations are required by statute to be "designed to insure that children in . . . family day care homes are provided with wholesome growth and education experiences, and are not subjected to neglect, mistreatment or immoral

surroundings." 33 V.S.A. § 3502(d). Such rules and regulations have been adopted and are found in the "Regulations for Family Day Care Homes", effective October 7, 1996. Furthermore, the Commissioner has the specific authority to revoke registrations "for cause after hearing" and to suspend registrations "in situations which immediately imperil the health, safety, or well-being" of children. 33 V.S.A. § 306(b)(3).

Besides specific limitations on the allowable numbers of children for whom care can be provided the regulations adopted by the Commissioner include the following:

SECTION I - ADMINISTRATION

. . .

4. The following persons may not operate, reside at, be employed at or be present at a Family Day Care Home:
. . .
c. adults or children who have had a report of abuse or neglect substantiated against them under Chapters 49 and 69 of Title 33 Vermont Statutes Annotated.

. . .

SECTION VI - RELATIONSHIP BETWEEN REGISTRANT AND DIVISION OF LICENSING AND REGULATION

. . .

8. The applicant or registrant shall not interfere with, impede, deter, provide false information or cause another to do any of the aforementioned, or in any

manner hinder the Department or its agent[s] in an investigation or inspection.

9. A violation of any section of the law or regulations regarding a Family Day Care Home may be cause for the revocation of the Registration Certificate.
10. When there is reason to believe that the health, safety or well-being of children in care is immediately imperiled, the registration certificate may be suspended.

. . .

In this case the evidence is clear that despite several warnings from the Department and assurances from the petitioner that she understood and would comply with the regulations, the petitioner was simply unwilling or unable to abide by the regulations regarding limits on the numbers of children and keeping prohibited persons out of her day care. Moreover, the petitioner's continuing prevarication and incredible denials clearly support the Department's determination that she is untrustworthy to operate a family day care home within the regulations. See 3 V.S.A. § 8814. Inasmuch as the Department has clearly demonstrated that it has acted within its discretion, its decisions suspending and revoking the petitioner's day care registration must be upheld. 3 V.S.A. § 3091(d) and Human Services Board Rule 17.

#