

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 18,781
)
Appeal of)
)

INTRODUCTION

The petitioner appeals the decision by the Department of Social and Rehabilitation Services (SRS) revoking her registration to operate a family day care home. The issue is whether the petitioner failed to comply with the Department's regulations regarding allowable numbers of children and, if so, whether the Department acted within its legal discretion in revoking her registration.

FINDINGS OF FACT

In lieu of much of the oral testimony the petitioner and the Department agreed to the following stipulated facts:

1. [Petitioner] submitted an application for a Registered Family Child Care Home certificate on or about August 26, 1996. As part of the application, [petitioner] certified that she had read and understood the regulations, that she was in compliance with them, and that she would remain in compliance with them.

2. [Petitioner] had previously had a relationship with the Department as the owner or director of the [center], a licensed early child care program. While that program was licensed, the Department had determined and cited the program for being out of compliance with licensing regulations related to staff-child ratios, resulting in Parental Notification Letters to parents.

3. Field Specialist [name] conducted a Pre-Registration visit at [petitioner's] home on October 10, 1996. During the visit, [name] reviewed the applicable regulations, including the regulations related to the number of children permitted in care, and offered [petitioner] the opportunity to ask questions or seek clarification.

4. The Department issued [petitioner] a registered home certificate on or about October 30, 1996, with an expiration date of November 1, 1997.

5. [Petitioner] re-applied on or about September 15, 1997. As part of the application, [petitioner] certified that she had read and understood the regulations, that she was in compliance with them, and that she would remain in compliance with them. The Department issued [petitioner] a registered home certificate on October 22, 1997, with an expiration date of November 1, 1998.

6. [Petitioner] re-applied on or about October 20, 1998. As part of the application, [petitioner] certified that she had read and understood the regulations, that she was in compliance with them, and that she would remain in compliance with them. The Department issued [petitioner] a registered home certificate on April 22, 1999, with a retroactive effective date of November 1, 1998, and an expiration date of November 1, 1999. The certificate was conditioned: "Maintain compliance to Regulations for Family Day Care Homes."

7. [Petitioner] re-applied on or about September 28, 1999. As part of the application, [petitioner] certified that she had read and understood the regulations, that she was in compliance with them, and that she would remain in compliance with them. The Department issued [petitioner] a registered home certificate on February 22, 2000, with a retroactive effective date of November 1, 1999, and an expiration date of November 1, 2000. The certificate was conditioned: "Maintain compliance to Regulations for Family Day Care Homes."

8. On June 28, 2000, Licensing Field Specialist [name] made an unannounced visit to [petitioner's] home in response to an anonymous complaint. There (were) eleven (11) children present, including [petitioner's] son, and only [petitioner] was providing care to the children. [Name] cited [petitioner]

for being over numbers in violation of Section II, Number 1, explained that the summer option required a second caregiver when the 7th child arrived, and required [petitioner] to complete a Parental Notification (PNL). [Petitioner] completed the PNL but also wrote [name] a letter seeking technical assistance on the summer option. On August 14, 2000, [petitioner] submitted a letter to the Department indicating that she understood the number of children she was allowed to have and that she would "follow through with the numbers allowed."

9. [Petitioner] re-applied on or about November 3, 2000. As part of the application, [petitioner] certified that she had read and understood the regulations, that she was in compliance with them, and that she would remain in compliance with them. The Department issued [petitioner] a registered home certificate on December 4, 2000, with a retroactive effective date of November 3, 2000, and an expiration date of December 4, 2001. The certificate was condition, in part: "Maintain compliance to Regulations for Family Day Care Homes."

10. On August 15, 2001, [name] made an unannounced visit to [petitioner's] home in response to a complaint from a member of the public that [petitioner] was routinely over

numbers. [Petitioner] was the sole caregiver present and providing care to nine (9) full time children. Her husband was upstairs with their own child and [petitioner] indicated that her helper had gone shopping. The helper returned from the store about 15-20 minutes later, but because [name] had personally explained the summer option and the requirements for the second care giver previously, [name] again cited [petitioner] for being over numbers and required her to complete a PNL. [Name] again explained the requirements of Section II, Number 1 and had [petitioner] document her understand of the numbers requirement by completing a Stipulated Agreement. [Petitioner] completed the PNL, as required, also indicating in the letter her dissatisfaction with the numbers restrictions on her registered home.

11. [Petitioner] re-applied on or about October 31, 2001. As part of the application, [petitioner] certified that she had read and understood the regulations, that she was in compliance with them, and that she would remain in compliance with them. The Department issued [petitioner] a registered home certificate on August 5, 2002, with an effective date of August 5, 2002, and an expiration date of September 1, 2003. The certificate was conditioned: "Maintain compliance to Regulations for Family Day Care Homes."

12. On December 17, 2004, [name] made an unannounced visit to [petitioner's] home in response to a complaint from a parent. [Petitioner] had called the Consumer Concern Line herself, prior to the parent's call, in order to report that the parent was disgruntled and would probably be calling. When [name] arrived, a parent was just leaving with a pre-school child. There were six (6) other pre-school children present. Although [petitioner] did have a helper on duty with her, [name] again explained the requirements of no more than 6 full time pre-school children and the summer options that involved school aged children only. [Name] cited [petitioner] for being over numbers and again required a PNL.

13. [Petitioner] re-applied on or about August 20, 2003. As part of the application, [petitioner] certified that she had read and understood the regulations, that she was in compliance with them, and that she would remain in compliance with them.

14. As part of the application, [petitioner] also certified that she had taken three 2 hour courses, although the courses had not yet been completed. The first course [petitioner] listed, Shaken Baby Syndrome, was scheduled for September 16, 2003. The second course listed, Supporting Early Language, was scheduled for September 23, 2003. The

third course listed, Principles of Child Development, was scheduled for September 10, 2003.

15. On September 29, 2003, [name] made an unannounced visit at [petitioner's] home in response to a complaint that alleged, among other things, that [petitioner] was utilizing under age care givers. When she first arrived, [name] found eight children present, one of whom was school aged but in care all day. Of the remaining seven, [name] determined that they were all preschool aged, with two children under age two. Two caregivers, one of them under the age of 18, were watching the children in the basement while [petitioner] was upstairs taking a shower. While [name] was there another preschool child arrived, making a total of nine (9) children present at [petitioner's] home. [Name] cited [petitioner] for over numbers and required a PNL. [Petitioner] complied with the PNL, but expressed her dissatisfaction with the limits on the numbers of children for whom she could legally provide care.

In addition to the above, on the basis of testimony presented at the hearing in this matter, held on April 21, 2004, the following findings are made:

16. The petitioner testified that the facts contained in paragraph 14 (*supra*) were the result of an "innocent mistake"

on her part as to the timing and availability of those classes.¹

17. However, as to her admitted repeated violations of the numbers requirements, even through the hearing the petitioner continued to assert that she should not be subject to these limitations as long as the needs of her customers dictate that she occasionally be over numbers.

ORDER

The Department's decisions are 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. 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 educational experiences, are not subjected to neglect, mistreatment or immoral surroundings." 33 V.S.A. § 3502(d).

¹ In light of the much more serious nature of the violations admitted by the petitioner, it is unnecessary to determine the credibility of the petitioner's explanation for providing false information as to when she took the classes in question.

Such rules and regulations have been adopted and are found in the Department's **Regulations for Family Day Care Homes**.

Furthermore, the Commissioner has the specific authority to revoke registrations "for cause after hearing". 33 V.S.A. § 306(b)(3).

The regulatory definitions specifically list "group size" as a "serious violation" of the regulations. More specifically the regulations include the following:

SECTION II - PROGRAM

NUMBERS OF CHILDREN PERMITTED IN REGISTERED FAMILY DAY CARE HOMES

THE FOLLOWING LIMITS APPLY IN REGISTERED FAMILY DAY CARE HOMES

During the School Year

Six children any age including up to two children under the age of two per caregiver. . .

Four school age children not to exceed four hours per child. . .

The Board has consistently held that if it is found that an individual has violated the above regulation, the Commissioner has the authority to determine what action to take and the "cause" needed to revoke a day care registration certificate if he deems it an appropriate remedy. See also, 3 V.S.A. § 8814, Huntington v. SRS, 139 Vt. 416 (1981). The Board will only overturn such a decision if the Commissioner

has acted arbitrarily, capriciously or has otherwise abused his discretion.

As noted above, undisputed evidence in this case shows that the petitioner has repeatedly and unapologetically flouted the above regulation. In light of this it must be concluded that the Department is within its discretion in revoking her family day care home registration.

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