

not been convicted or found by a court to have committed a felony, a crime of violence, an unlawful sexual activity, or had abuse or neglect substantiated against them.

4. On her application, [petitioner] certified, among other things, that she had read the LECC Requirements, understood them, and was in compliance with them. [Petitioner] also certified she understood that if she failed to meet the LECC requirements no payment for child care would be made by the Department.

5. The Department performed a search of the Vermont Criminal Information System on [petitioner] and her household members February 17, 2005. The search result indicated that [petitioner's] husband had a number of criminal convictions, three of which fall within the definition of a "prohibited person" under LECC Requirement B.1: simple assault by mutual consent, February 1, 1999 (Docket No. 129-1-99Bncr), domestic assault February 23, 1999 (Docket No. 10-1-99Bncr) and grand larceny July 15, 1991 (Docket No.: 231-3-81Bncr).

6. The Department notified [petitioner] that her application was denied due to her failure to meet LECC Requirement B.1 in a letter prepared and mailed on February 24, 2005.

7. [Petitioner] appealed the Department's denial of her LECC application.

8. Peter Danles, Child Care Licensing Director, met with [petitioner] at her residence in North Bennington on May 27, 2005. He also met with [petitioner's] husband at his place of employment and talked with [petitioner] subsequently on the telephone in order to conduct a Commissioner's Review of the denial and to evaluate whether a variance of LECC Requirement B.1 might be warranted.

9. After consideration of the arguments, Mr. Danles upheld the denial of [petitioner's] LECC application and also concluded that a variance was not warranted. His decision was communicated to [petitioner] in a Commissioner's Review letter mailed on or about June 6, 2005.

In addition to the above, the following finding is made based on the credible testimony of the Department's Licensing Director:

10. During an interview, the petitioner told the Licensing Director that she had checked "no" to the question on her application regarding criminal history of household members because she felt it was "not important". At the time, the petitioner offered no other reason for misrepresenting her husband's criminal history.

11. At the hearing in this matter, held on September 14, 2005, the petitioner admitted that she had "lied" on her application, but that she regrets doing so. She stated that her husband's convictions in 1999 stemmed from family difficulties that have now been resolved and that she now feels "victimized" by the Department placing so much emphasis on these matters.

ORDER

The Department's decision is affirmed.

REASONS

Section B.1. of the SRS LECC regulations includes the following provision:

The following persons may not be providers, be present in, or reside in the home of the Provider:

- a person found by the court to have committed fraud, a felony, or other offenses involving violence or unlawful sexual activity or other bodily injury to another person.

. . . .

There is no dispute in this matter that the petitioner's husband's convictions were either felonies or crimes of violence. Although the regulations make no specific provision for the passage of time, the following provision appears at G.8.:

The SRS or DSW Commissioner, or his or her designee, may grant a variance to these requirements under unique and exceptional circumstances when literal application of a part of these requirements will result in an unnecessary hardship and the intent of the requirement can be achieved by other means.

In past cases (see e.g. Fair Hearing Nos. 15,652 and 17,322) the Board has held that the Department has considerable discretion in deciding the circumstances in which a variance from the above provisions can be granted. In this case, given the fact that the petitioner admitted falsifying her application, based on the regulations it cannot be concluded that the Department abused its discretion under the law in denying her a variance. Therefore, the Board is bound to affirm the Department's decision. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

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