



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

PROPOSED DECISION

Charities Child Care

ML-09-0208

Pursuant to petition filed July 24, 2009, under §227.44, Wis. Stat., to review a decision by the Department of Children and Families (DCF), a hearing was held on November 19, 2009 at Milwaukee, Wisconsin.

The issue for determination is whether the DCF correctly denied petitioner's application for a family child care license.

There appeared at that time and place, the following persons:

PARTIES IN INTEREST:

Petitioner:

Tondra Boose
Charities Child Care
3118 North 54th Street
Milwaukee, WI 53216

Respondent:

Department of Children and Families

By: Debra Bursinger
Office of Legal Counsel
201 East Washington Avenue, 2nd Floor
Madison, WI 53703

Appearing by phone: Cinda Stricker, Regional Licensing Chief

Administrative Law Judge:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. The applicant/petitioner is a resident of Milwaukee County. She filed a complete license application to operate a family child care facility on May 4, 2009. Exhibit R-2.
2. The Department of Children and Families (DCF) issued a Notice of Denial of Family Child Care License to the petitioner in care of its principal, Tondra Boose, on July 15, 2009. Exhibit R-1. Ms. Boose timely appealed from that denial.

3. The DCF's bases for denying the requested license were that Ms. Boose (1) failed to disclose convictions and pending charges on the Background Information Disclosure Form (BID) attached to her application, (2) was convicted of an offense(s) that is substantially related to the licensed care of children and (3) that Ms. Boose is not "fit and qualified" for licensure.
4. In answer to the question on the BID attached to her license application, "Do you have any criminal charges pending against you or were you ever convicted of any crime anywhere, including in federal, state, local, military and tribal courts?" and to list each crime and conviction, petitioner answered "Yes" and wrote in "no charges pending, had some fines." Exhibit R-2.
5. Petitioner has the following convictions in her record:
 - a. Retail Theft-Alter Price; convicted November 17, 2000; Case #1999CM00036;
 - b. Disorderly Conduct (use of Dangerous Weapon); convicted March 10, 2003; Case# 2002CM009711;
 - c. Obstructing an Officer; convicted June 11, 2007; Case #2006CM000846;
 - d. Obstructing an Officer; convicted June 11, 2007; Case #2006CM001055;
 - e. Resisting or Obstructing an Officer; convicted August 17, 2007; Case #2006CM003486.
6. On August 2, 2009 petitioner was charged with Operating While Revoked (2nd) in Manitowoc County. That charge was pending when petitioner applied for licensure. See Exhibit R-11.
7. Petitioner has also been found guilty of the following municipal court violations:
 - a. Retail Theft and Resist/Obstruct an Officer (7/28/99); Case #0382C (Wauwatosa);
 - b. Operating Vehicle After Suspension/Revocation (5/30/02), Operating After Suspension (6/4/02), Operating After Suspension (9/11/02), Operating After Suspension (5/7/03), Operating After Suspension (7/2/03), Operating Vehicle After Suspension/Revocation (1/10/08), Operating Vehicle After Suspension/Revocation (4/3/08); Case #s 02071098, 02072602, 02113735, 03058544, 03089169, 07133164, 08026899 (Milwaukee), respectively;
 - c. Non-registration of Vehicle (5/7/03, 7/2/03, and 12/28/05); Case #s 03058543, 03089170, and 05123676, respectively (Milwaukee);
 - d. Disorderly Conduct (5/12/04); Case #04044271 (Milwaukee);
 - e. Resisting/Obstructing Police Officer (5/12/04 and 11/1/06) Case #04044272 and 06102937.
 - f. Various traffic violations; Case #s 02071097 (5/30/02), 02113734 (9/11/02), 03058370 (5/7/03), 03058542 (9/15/04), 03089171 (9/15/04), 04037703 (7/14/04); 04044417 (5/12/04); 04044418 (5/12/04); 05117221 (12/8/05); 05123675 (12/28/05); 05123677 (12/28/05); 06103295 (11/1/06); 07026566 (4/9/07); 07133163 (1/10/08) 08010229 (2/5/08) 08019930 (3/17/08); see Exhibit R-15.
8. With respect to the violations in the City of Milwaukee, petitioner has an attendant history of failing to pay the fines associated with each violation, failing to appear as required, and bench warrants were issued on petitioner accordingly. See Exhibit R-15.
9. On May 28, 2009 petitioner was charged with Vandalism and Disorderly Conduct in the City of Milwaukee. Those charges were pending when petitioner applied for licensure. See Exhibit R-15.
10. Petitioner has several unpaid judgments. Petitioner owes the City of Milwaukee \$930.95 in municipal fines and the County of Waukesha \$1050 (Case #1999TJ000969). See Exhibit R-15 (p.17) and R-16.
11. Petitioner has a record of judgments entered against her in Milwaukee County. On 10/2/03, Wisconsin Electric Power Company received a judgment against petitioner for \$3124.91 (Case

#2003SC023747). On 2/18/05 Wisconsin Electric Power Company received a judgment against petitioner for \$5259.50 (Case #2004SC040594). On April 28, 1998 a small claim award in the amount of \$401.70 was made against petitioner for an eviction action (Case #1998SC011674). Exhibits 17-19.

12. Petitioner has a history of seeking temporary restraining orders and being the subject of temporary restraining orders sought from others in Milwaukee County (Case #s 1997CV000722, 1997CV000723, 1997CV004702, 1998FA005459, 2001CV001937, 2008FA006050, 2009CV008186, and 2009FA003965). Exhibit 20.

DISCUSSION

State licensing procedures and requirements for childcare are specified in Wis. Stat. §§48.65 through 48.77. A person may not operate a day care center over a certain size without a license issued by the department. Wis. Stat., §§48.66(1) and 48.715(2)(a). The broad bases for denial of a child day care license are stated at section 48.68(1), which then cross-references sections 48.67 and 48.685. Section 48.67 directs the Department to develop rules with further standards for licensure.

The Department has promulgated rules pursuant to the statutory directive. The pertinent rule here reads as follows:

(2) GENERAL CONDITIONS FOR APPROVAL OF LICENSE.

...

(a) Prior to receiving or continuing a license, an applicant for a license under this chapter shall complete all application forms truthfully and accurately and pay all fees and forfeitures that are due to the department.

...

(c) Persons licensed to operate a family child care center shall be responsible, mature individuals who are fit and qualified. In determining whether an applicant is fit and qualified, the department shall consider any history of civil or criminal violations or other offenses substantially related to the care of children by the applicant, owner, manager, representative, employee, center resident or other individual directly or indirectly participating in the operation of the family child care center. A determination that a person is unfit and unqualified includes substantiated findings of child abuse or neglect under [ch. 48, Stats.](#), or substantiated abuse under [ch. 50, Stats.](#), or under similar statutes in another state or territory whether or not the abuse or neglect results in a criminal charge or conviction.

Wis. Admin. Code §DCF 250.11(2)(a),(c). Among the application forms that must be truthfully completed is the BID. *Id.*, (4)(a)2.

There is no dispute that petitioner was convicted of the crimes in Finding #5, had the charges pending per Findings #6 and 9, had the judgments pending or satisfied against her per Findings #10 and 11, or that there was history of the temporary restraining orders per Finding #11. She acknowledges that these things occurred. However, she asserts that she simply misunderstood the BID question regarding past convictions.

The BID question could not have been clearer and not susceptible to misunderstanding:

1. Do you have any criminal charges pending against you or were you ever convicted of any crime anywhere, including in federal State, local, military and tribal courts?

If **Yes**, list each crime, when it occurred or the date of the conviction, and the city and state where the court is located. You may be asked to supply additional information including a certified copy of the judgement of conviction, a copy of the criminal complaint, or any other relevant court or police documents.

Petitioner answered this with “Yes”, but then wrote in “no charges pending, had some fines.” Exhibit R-2. This is not truthful. That alone was sufficient basis for license denial. *Id.*, (8)(a)8.

The Department also correctly denied this application because she was convicted of a felony, misdemeanor or other offense that substantially relates to the care of children or activities of the center, pursuant to Wis. Admin. Code §DCF 250.11(8)(a)2. The offenses and/or convictions involved theft, assault with her vehicle, instances of lying to police, and failing to appear as required by courts. Licensed providers have access to private and public monies and should be considered trustworthy. The pattern of disregard for the law, others’ possessions or body was evident in the assault with her vehicle. The Disorderly Conduct (use of Dangerous Weapon) charge involved petitioner using her car to ram the car of an ex-boyfriend. Petitioner denied that she knew that her ex-boyfriend’s young daughter was in the car. Even if I believe her, the assault gives reasonable concern over petitioner’s ability to manage stress or anger. These kinds of underlying issues should give reasonable concern to a reasonable person that there is a lack of trustworthiness, honesty and/or responsibility level necessary to grant a license to someone seeking to run a business that provides care for children.

The Department also correctly denied the application based on the history of criminal convictions, non-criminal municipal violations, failure to pay fines, failure to appear by court order, and history of judgments. The instances of obstructing police officers involved lying about her identity. Petitioner’s history shows not only financial irresponsibility but continued disregard for the law. I must agree that the agency was correct in determining that she is not “fit and qualified” to operate a family child care center as petitioner’s responsibility and maturity were clearly questionable under §DCF 250.11(8)(b).

Petitioner’s essential response to the denial was that she did not find it fair that she has to be punished for the convictions and actions that occurred in the past. She testified that she had filed for bankruptcy in 2005 and was unaware of any outstanding fines or judgments. With respect to the temporary restraining orders, all of which were dismissed, they largely came about as a result of an abusive relationship with an ex-boyfriend – the same ex-boyfriend that spurred the events surrounding the Disorderly Conduct (use of Dangerous Weapon) conviction. She also testified that she must have misread the application when she answered the BID question as she did. She testified that she thought she only had the 2002 conviction for disorderly conduct on her record. I note that she did not list that conviction either. With respect to the theft conviction, she testified that she was running with the wrong crowd at that time. Petitioner appeared at hearing and I believe her to be credible in her intent to get her life back on track. However, I also must agree that the Department was reasonable in its denial of her application.

Under §DCF 250.11(2)(g) the department may not process an application for a license if the applicant has had a license to operate a child care center denied within the last 2 years prior to the date of the application. Thus, the petitioner will have to wait until May 4, 2011, before she can reapply for a family child care license. At this point, that is a year away, which could be an appropriate amount of time to show that these matters are no longer a concern. She may re-apply after that date.

CONCLUSIONS OF LAW

1. The Department correctly denied the petitioner's application for a family child care license because the applicant did not truthfully answer license application materials.
2. The Department was correct in denying the petitioner's application for a family child care license because she was convicted of a felony, misdemeanor or other offense that substantially relates to the care of children or activities of the center.
3. The Department correctly denied the petitioner's application for a family child care license because the applicant is not fit and qualified to operate a center.

NOW, THEREFORE, it is ORDERED

That the petition for review herein be and the same is hereby dismissed.

NOTICE TO RECIPIENTS OF THIS DECISION:

This is a Proposed Decision of the Division of Hearings and Appeals. IT IS NOT A FINAL DECISION AND SHOULD NOT BE IMPLEMENTED AS SUCH.

If you wish to comment or object to this Proposed Decision, you may do so in writing. It is requested that you briefly state the reasons and authorities for each objection together with any argument you would like to make. Send your comments and objections to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy to the other parties named in the original decision as "PARTIES IN INTEREST."

All comments and objections must be received no later than 15 days after the date of this decision. Following completion of the 15-day comment period, the entire hearing record together with the Proposed Decision and the parties' objections and argument will be referred to the Secretary of the Department of Children and Families for final decision-making.

The process relating to Proposed Decision is described in Wis. Stat. § 227.46(2).

Given under my hand at the City of
Madison, Wisconsin, this _____ day
of _____, 2010.

Kelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals

cc: Jim Bates, DCF