State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of:

More Than Conquerors Destiny House

PROPOSED DECISION
Case No.: ML-09-0212

PRELIMINARY RECITALS

The petitioning group foster home, by Caprice Mathies-Hill, licensee/operator, filed an appeal in the above-numbered action with the Division of Hearings & Appeals on July 27, 2009. The appeal contested the action of the Department of Children & Families, Division of Safety and Permanence – Bureau of Permanence and Out-of-Home Care, to revoke the petitioner's group foster home license from the Department to operate this site. This action was taken by written notice on July 20, 2009, as fully described in a NOTICE OF REVOCATION OF GROUP FOSTER HOME LICENSE, pursuant to Wis. Stat. § 48.715 and Wis. Admin. Code § DCF 57. The jurisdictional basis for this appeal was under Wis. Stat. § 48.72 and Wis. Stat. § 227.44. A hearing was held on May 17, 2010, in Milwaukee, Wisconsin. A hearing set for December 9, 2009, was rescheduled at the joint request of the parties due to inclement weather.

FINDINGS OF FACT

1. The petitioning group foster home licensee is a resident of Milwaukee County and was operating a group foster home located in Milwaukee in at least June, 2009.

2. On June 30, 2009, a social worker with the Department's Bureau of Milwaukee Child Welfare filed a complaint alleging violations by the petitioning group foster home of licensing rules or statutes because a minor, "T.S.", in care at the group foster home reported to his "Wraparound Team" that he had been bullied at the group home by other, bigger and older boys; is getting beaten up; and they are taking his clothes off down to his underwear and wrestling and slapping him.

3. The complaint was referred to Department Licensing Specialist Cindy Phillips for investigation on June 30, 2009.

4. On July 9, 2009, Phillips performed a visit to the group foster home. She reviewed the facility's records and health care documentation and found violations of statutes and rules in the group foster home's administration and records, health and medical oversight, general program operations, supervision and staff coverage and in the provision of requisite transportation, as itemized in Exhibit R-2, at p. 2; see also the list under the first ground for the revocation quoted below in Finding of Fact #5, as "bulleted"; and see, Exhibit R-3.

5. On July 20, 2009, the Wisconsin Department of Children and Families, by the Division of Safety and Permanence – Bureau of Permanence and Out-of-Home Care, issued a NOTICE OF REVOCATION OF GROUP FOSTER HOME LICENSE to the petitioner. The NOTICE stated two grounds for revocation. First, under Wis. Stat. § 48.715(4)(b) the Department was revoking for substantial

violations of rules [promulgated under Wis. Stat. § 48.67], provisions of licensure [Wis. Stat. § 48.70(1)], or a departmental order, said violations identified therein as follows:

- The group home did not provide appropriate transportation when a resident missed a therapy appointment.

- The group home did not provide a day to day activity schedule or have available a variety of recreational activities.
- The group home did not follow proper reporting procedures when residents were on AWOL status or when a resident informed a staff person of another resident asking him for "head".
- The group home failed to notify the placing agency of residents' progress and planning, when residents were AWOL, refused medication and were smoking marijuana.
- The group home failed to provide a safe, stable, humane environment when on two occasions a resident was locked out the group home late at night.
- The group home failed to provide appropriate supervision on numerous.
- The group home failed to administer medication to the residents as prescribed and ensure proper staff documentation of this.
- The group home failed to ensure that resident records contained the required documentation, such as court orders, treatment plans and medical consents.

The second ground for revocation was stated in the Notice to be that pursuant to Wis. Stat. § 48.715(4)(c), the Department can revoke a group home license when a licensee or person under supervision of the licensee has committed an action or created a condition relating to the operation or maintenance of a group home that directly threatens the health, safety or welfare of any child in care; and that pursuant to Wis. Admin. Code § DCF 57.015, a person licensed to operate a group home shall operate in compliance with that chapter, the provisions of the license, and applicable federal, state and local law; and that the petitioner had created a condition directly impacting health, safety and welfare of resident by allowing the group home to operation in a manner not in compliance with Wis. Admin. Code § DCF 57, as listed above under the first revocation ground, and in Attachment A. See, Exhibits R-3 & R-10.

6. On July 27, 2009, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the revocation of the group foster home license to operate More Than Conquerors Destiny House.

7. The petitioning group foster home did not have a day to day activity schedule or any scheduled activities at the home; rather, it provided a list of free activities in the greater Milwaukee community that the adolescents in care could choose to avail themselves of over the summer of 2009. See, Exhibit P-4.

8. On June 13, 2009, three resident boys of the group foster home left the residence and went to a neighborhood party. Only one boy return prior to curfew. The other two boys were located by a facility staffer the next morning at the site of the neighborhood party. At no time in between did any agency employee contact any law enforcement agency to report that the boys were absent from the group foster home without permission or to seek assistance in locating them.

9. On at least five other dates, the group home did not notify law enforcement when a resident or residents left the group home without permission, i.e., on June 16, June 17, June 28, July 3, and July 8, 2009. And see, Exhibit R-3, Attachment A, pp. 1-2.

10. At the time of the field visit by licensing specialist Cindy Phillips on July 7, 2009, there was no court order for the placement of T.S. at the group foster home on file; nor were there any medical release or consent documents or non-medical release or consent documents on file pertaining to T.S. Similarly, there was no treatment plan for T.S. on file in the group foster home records, even though he had been admitted on May 12, 2009, and discharged on June 29, 2009. And see, Exhibit R-3, Attachment A, pp. 1-4.

11. At the time of the field visit by licensing specialist Cindy Phillips on July 7, 2009, the group foster home medication administration records indicated that there was no entry for medication administration to T.S. for May 12, 21 and 31, 2009, for the drug Concerta, nor any entry for May 30 and 31, 2009 for the drug Risperdone. There was only an "X" mark in the box on the document for Risperdone on May 16, 2009. Likewise, there were no such entries for another resident, D.L. for the drug Loratadine for May 17, 19, 21-27, 30, and 31, 2009. And see, Exhibit R-3, Attachment A, p. 4.

12. On June 22, 2009, resident D.L. missed a therapy appointment because the group foster home failed to make an employee available to transport him to the appointment. And see, Exhibit R-3, Attachment A, p. 2.

13. On July 3, 2009, the group foster home staff would not allow the entry of resident D.M. when he rang the doorbell at 11:30 P.M., and did not let him enter until 2:00 A.M. on July 4, 2009, after D.M. contacted the Bureau of Milwaukee Child Welfare informing it that the group foster home would not admit him.

14. The abuse allegations related by T.S. to the BMCW social worker on or about June 30, 2009, referenced in Finding of Fact #2, above, were determined by the Department and its agents to be "unsubstantiated" on August 14, 2009. See, Exhibits P-2 & P-3.

DISCUSSION

The Department has been granted the discretionary power to revoke a group foster license under certain circumstances. This power is delineated in Chapter 48 of the Wisconsin Statutes. Wis. Stat. § 48.715(4), provides for the revocation of a license for a day care, foster home, treatment foster home, group home, shelter care facility, child welfare agency and/or a county department.

This section, in the parts relevant here, states as follows:

> If the department provides written notice of revocation and the grounds for revocation as provided in sub. (4m) and an explanation of the process for appealing a revocation under this subsection, the department may revoke a license issued under s. 48.66(1)(a) or a probationary license issued under s. 48.69 for any of the following reasons:
>
> ****(Note: irrelevant section omitted here.)
>
> (b) The licensee or a person under the supervision of the licensee has committed a substantial violation, as determined by the department, of a rule promulgated under s. 48.67, a provision of licensure under s. 48.70(1) or an order under this section.

> (c) The licensee or a person under the supervision of the licensee has committed an action or has created a condition relating to the operation or maintenance of the child welfare agency, shelter care facility, group home or day care center that directly threatens the health, safety or welfare of any child under the care of the licensee.

Wis. Stat. § 48.715(4)(b) & (c). Wis. Admin. Code § 57.015 likewise requires a group foster home licensee to operate in compliance with Chapter 57, the specific provisions of the license, and applicable state, federal and local law.

The Department promulgated rules, pursuant to the authority to do so under Wis. Stat. § 48.67, for the regulation of various types of licenses. Rules are found in the Wisconsin Administrative Code regulating several classes of child care and child welfare licenses, including Wis. Admin. Code §DCF 56 (foster homes); and Wis. Admin. Code §DCF 57 (group foster homes).

Licensing specialist Cindy Phillips testified at length in support of the Department's case, describing her field visit on July 9, 2009, her investigation, and her conclusions. She said that the licensee committed at least 17 violations of the Code, DCF Chapter 57, and that these were substantial violations that she determined required the revocation of the instant group foster home license. She testified that each was summarized in detail in Exhibit R-3, Attachment A, pp. 1 – 6, in sequence, (Items Nos. 1-17).

For example, Phillips testified that there was no written "program statement" available during her home visit. Rather, she found adolescents in care free to come-and-go at will during the day. She noted that on the day of her home visit, two male residents were observed walking around the neighborhood or sitting on the front steps conversing with neighbors. She testified that there were no documented or posted description of daily activities at the group home available to residents. Both were stated to be violations of Wis. Admin. Code §§DCF 57.05(1)(b).

Phillips also testified that a review of licensee records revealed that on six dates residents left the group home without permission and\or failed to return, and the licensee did not contact or notify law enforcement agencies, in contravention of Wis. Admin. Code §DCF 57.05(2)(i). See, Exhibit R-3, Attachment A, p. 1. In particular, this violation was stated by Phillips to include the night of June 13, 2009, when three residents left the home, attended a party in the neighborhood, and only one returned that night. The other two adolescents were located by group home staff the next morning still at the neighborhood party site.

Phillips testified that the group home licensee failed on one occasion (June 22, 2009) to transport a resident to a medical appointment because no employee could be made available that day to do so, and that this failure contravened Wis. Admin. Code § DCF 57.12(1), requiring the licensee to provide safe transportation of residents.

Phillips testified that when T.S. made allegations of abuse by other residents and/or said that he was asked to "give head" to another resident, her investigation revealed that the group foster licensee, by employees, assessed the situation and determined that T.S. was not being truthful and did not report the abuse allegations to a law enforcement agency, child welfare agency or the Department of Children and Families in violation of Wis. Admin. Code §DCF 57.13(1)(a). Phillips testified that T.S. told a foster home staffer this allegation on June 12, 2009, but no report was made by the licensee to the regional office of DCF. That Code provision requires the licensee to report a "serious incident" to the regional office within 72 hours, including "any incident of suspected abuse…by an …household member of the group home; including a report made to a law enforcement agency, a county department of social services, or a child welfare agency."

Phillips testified verbally almost verbatim all of the summary statements for the remaining rule violations alleged in that Exhibit R-3, Attachment A, pp. 1 – 6, in sequence, (Item Nos. 6-17).

She noted that Items 11, 12, 13, 14 & 15, concerned multiple record-keeping violations involving resident T.S., including the lack of a court order on file placing him in the group foster home (in violation of Wis. Admin. Code §DCF 57.38(1)(c); the lack of a treatment plan (in violation of Wis. Admin. Code §DCF 57.38(1)(h); the lack of medical releases and consents on file for T.S. (in violation of Wis. Admin. Code §DCF 57.38(1)(i)1; the lack of non-medical releases and consents on file for T.S. (in violation of Wis. Admin. Code §DCF 57.38(1)(o); and the omission of entries in the medication administration record for T.S. on six specified dates in May, 2009 (and another resident, "D.S." on 11 days on May, 2009) (in violation of Wis. Admin. Code §DCF 57.25(5)). See, Exhibit R-3, Attachment A, pp. 1 – 6, in sequence, (Item Nos. 11-15).

In reply, the licensee, Caprice Mathies-Hill, testified that the licensee does have a program statement, but it just was not posted in plain view when Phillips visited. She testified that the group foster home does document for the residents, but children come into the foster group home with lists of activities and treatment plans, and the foster home does not just "throw" programming at them but "develops it over time" to meet the needs of each resident. Mathies-Hill testified that on one of the 6 days with residents absent without permission that the child had a birthday but his plans fell through. She opined that the residents are allowed to leave the group home because it is a family-like setting, but they must sign out and in to do so. Mathies-Hill admitted that the licensee was unable to transport T.S. to a medical appointment one time, because of staff conflicts, but that was the only time that happened. She admitted that her employee could have done a better, clearer, job of logging his actions regarding the allegations about T.S. being asked to give head, and that what he entered made it look like the home was hiding the information therein by noting that he (the staffer) had not discussed it with anyone. As far as keeping accurate medical records, she asserted that the licensee did, but there may have been an instance of mis-documentation. She admitted a resident had been locked out (Item No. 7) on July 2-3, 2009, but said this was justified because the boy was "high". When asked how she knew he was high if he had not been let in, she replied that was because he said he was high. However, the record indicates that after the boy called the Bureau of Milwaukee Child Welfare to report that he was not being let in the foster home, he was then let in at 2:00 A.M. after being outside since at least 11:30 P.M. Mathies-Hill admitted that two residents were AWOL all night on June 12-13, 2009, without the licensee contacting law enforcement agencies, and this was the fault of a second shift worker that came in to work after the boys had left the home. She said this employee was subsequently terminated. She testified that the licensee has a written plan. See, Exhibit R.-4. She blamed the social worker for T.S. for the lack of a copy of a court order for T.S., as well as other releases and consents for T.S. She admitted as to Exhibit R-3, Attachment A, Item No. 15, the medication administration records, "…clearly there is some mis-documentation there." She opined that her staff needed to be more thorough and to receive more training in logging such documentation. She also admitted that the was some mis-documentation as to Item #16, because the foster home log reports that T.,S. refused his medication, but the medication administration record says he received it. Finally, she affirmatively denied Item No. 17, that her group home manager was failing to oversee day to day operations at the group home in a proper and required manner under Wis. Admin. Code §DCF 57.14(4)(b).

The petitioner produced three then-employees from the group foster home, Ella Byrd, Tony Nesbitt and Theresa Haskins. All three generally corroborated the testimony provided by Mathies-Hill in parts that each play a role in.

This record can be broken down, generally, into three categories of problems at the group foster home. One group relates to resident T.S., i.e., his allegations of abuse by other residents and a sexual "come-on" from another resident. A second group concerns clear deficiencies in the court, treatment, consent & release, and medical administration records, related to T.S., and to a lesser extent, resident D.M. The third group of

problems relates to the supervision of children in care and the utter failure of the group foster home to contact law enforcement agencies when residents were absent without leave, including one significant instance when two residents clearly identified by a third resident as being at a neighborhood party, failed to return for curfew, and were not located until the next day. There are also a grab-bag of single instance violations, particularly the failure to transport a resident to therapy.

The petitioner has testified in a generally evasive, convenient, self-serving manner to attempt to explain away all of these deficiencies as mere errors or lapses in record-keeping by some other employee of the group foster home. I find her testimony to be not very credible, and certainly not very persuasive as to the excuses proffered.

The violations of group foster care rules, as enumerated in detail in the Noncompliance Statement and Correction Plan of July 14, 2009, were corroborated by the testimony of licensing specialist Cindy Phillips. I found her testimony to be clear, consistent, detailed, corroborated by Exhibits R-3, R-2, R-1 & R-10, and very credible. I believe that this group foster home did not have accurate medical, treatment and court records for T.S. The group foster home staff did not maintain clear medication administration for drugs given to residents T.S. and D.L. on multiple occasions in May, 2009. The group foster home staff did not report residents missing without permission to law enforcement on at least June 13 – 14, 2009. The staff did not transport resident D.L. to a therapy appointment on June 22, 2009. And the group foster home staff did lock out a resident on July 3, 2009, for nearly 3 hours late at night, rather than implement any plan of behavior intervention or contact law enforcement if staff believed the child was on drugs. These deficiencies, rather than demonstration mere common errors in administration, rather reveal a complete lack of judgment by facility employees and administrators in to the duties and responsibilities of the operators of a group foster home. I need not go further to sustain every single item on the list of 17 violations asserted in R-3, Attachment A. I am fully satisfied that this list of rule violations justifies the Department's revocation action. This operation was not merely inefficient or slipshod in documentation, but the manner of operation also reflected great recklessness in the supervision of minors and adolescents in care. These violations placed the health, safety and welfare of child in care at substantial risk.

I am fully satisfied that the Department has established by far, far more than the preponderance of the evidence in this record that it was justified in exercising its discretionary authority to revoke the petitioner's group foster license due to multiple rule violations as determined on July 20, 2009. See, Exhibits R-10 and R-3. That action must be sustained.

CONCLUSIONS OF LAW

That the Department has correctly revoked the petitioner's group foster care license for multiple violations of the rules contained in Chapter 57 of the Wisconsin Administrative Code.

NOW, THEREFORE, IT IS

ORDERED,

That, *if and only if* ,this Proposed Decision is adopted by the Secretary in a Final Decision, then the petition for review herein is 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).

Dated at Madison, Wisconsin on June___, 2010.

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_____
Kenneth D. Duren, Administrative Law Judge
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cc: