



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

PROPOSED DECISION

Imagination Station

ML-09-0481

Pursuant to petition filed December 11, 2009, under Wis. Stat. § 227.44, to review a decision by the Department of Children and Families (DCF), a hearing was held on March 16, 2010, at Milwaukee, Wisconsin.

The issue for determination is whether DCF correctly denied petitioner's application for a Regular Family Child Care License.

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

PARTIES IN INTEREST:

Petitioner:

Imagination Station, by

Patricia Evans
Imagination Station
3745 N. 22nd Street
Milwaukee, WI 53206

Respondent:

Department of Children and Families, by

Attorney Nicole Bjork
Department of Children and Families
Office of Legal Counsel
201 East Washington Avenue, 2nd Floor
Madison, WI 53703

Administrative Law Judge:

Catherine G. Demski
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 August 12, 2009. (Exhibit R-1).

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, Patricia Evans, on November 25, 2009. (Exhibit R-10). Ms. Evans timely appealed from that denial.
3. The DCF's bases for denial of the application were that Ms. Evans (1) failed to disclose information relating to prior convictions on her Background Information Disclosure (BID) Form; (2) was convicted of an offense that is substantially related to the licensed care of children and (3) that Ms. Evans is not "fit and qualified" for licensure. (Exhibit R-10).
4. In response 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? If **Yes**, list each crime, when it occurred or the date of the conviction, and the city and state where the court is located," petitioner answered "Yes" and provided no other information. (Exhibit R-2).
5. Petitioner has the following criminal conviction: Resisting or Obstructing an Officer (Elm Grove Police Department), Misdemeanor, Convicted on 9-18-1998.
6. Petitioner has been found guilty of the following non-criminal ordinance violations: Retail Theft (Franklin Municipal Court), July 25, 2001; Possession of Drug Paraphernalia and Obstructing an Officer (Shorewood Municipal Court), July 10, 2002; Curfew-Parents' Responsibility and Retail Theft (Milwaukee Municipal Court), October 14, 2003. (Exhibits R-5, R-6, and R-7).
7. Petitioner has several financial claims/judgments against her in Circuit Court, including:
 - a. Department of Workforce Development, \$2875 (inclusive of costs), docketed March 19, 2009, Not Satisfied;
 - b. Payday Loan Store, \$274.50 (inclusive of costs), docketed March 27, 2006, Not Satisfied;
 - c. Wisconsin Electric Power Company, \$4611.16 (inclusive of costs), docketed March 23, 2005, Not Satisfied;
 - d. Department of Revenue, \$4179.80 (inclusive of costs), docketed April 16, 2001, Satisfied March 28, 2005;
 - e. J M Inv & 2045 LLC, \$6711.33 (inclusive of costs), docketed January 17, 2003, Not Satisfied;
 - f. Wal-Mart Stores Inc, \$1002.99 (inclusive of costs), docketed April 25, 2001, Not Satisfied;
 - g. C&L Enterprises & Louis Plotkin, \$978.00, not docketed, Judgment March 22, 1996;
 - h. City of Milwaukee, \$927.00, not docketed, Judgment June 1, 1995;
8. The petitioner has been found guilty of several traffic offenses, as recently as February 2010, including speedometer violations and operating with a suspended license. (Exhibit R-8).
9. Petitioner has had four prior contacts with the Bureau of Milwaukee Child Welfare (BMCW) (Exhibit R-9):

- a. On November 3, 1994 it was reported from a hospital that petitioner had given birth to a child on November 2, 1994, and you both tested positive for cocaine. No investigation ensued.
 - b. On December 15, 1999, petitioner reported a consensual sexual relationship between her then 15-year old daughter and a 22-year old male. The 22-year old male was charged and the CPS case was closed as substantiated. Petitioner did not cooperate with CPS' involvement.
 - c. On June 26, 2003, a referral was received regarding neglect of another one of petitioner's daughters (then 16-years old), who was arrested for possession of THC and prostitution. At that time, all of petitioner's children were being cared for by petitioner's adult daughter, who was receiving Kinship benefits. Petitioner's daughter described petitioner as a long-term drug user. Petitioner did not cooperate in the investigation.
 - d. On June 12, 2004, petitioner's son was involved in an incident where he was expelled from school for bringing a loaded automatic gun to school. Petitioner also described him as a drug dealer. At that time, petitioner participated in a Family Intervention and Support Services unit meeting with BMCW, but petitioner failed to follow through on parenting classes and behavior management training, even though petitioner had stated that she had been "clean for six months" and off of heroin.
10. Petitioner has testified that she had placement of two of her granddaughters from July 2005 through May 2009, pursuant to a court order. The children were two and three years of age when placed with petitioner.
 11. Petitioner has been off of drugs since September 2004 and is currently employed as a certified nursing assistant (CNA) at Mount Carmel Health & Rehabilitation Center.
 12. Petitioner testified that she filed Chapter 7 bankruptcy three years ago.
 13. Petitioner filed this appeal, concerning denial of her application for a Regular Family Child Care License on December 11, 2009.

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. *See* Wis. Stat. §§ 48.66(1) and 48.715(2)(a). The broad bases for denial of a child day care license are stated at Wis. Stat. § 48.68(1), which then cross-references §§ 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 rules for license approval read 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).

Similarly, the agency has more rules with respect to a license denial. In relevant part they state:

(8) LICENSE DENIAL OR REVOCATION.

(a) The department may deny, revoke or suspend a license, initiate other enforcement actions specified in this chapter or in ch. 48, Stats., or place conditions on the license if the applicant or licensee, a proposed or current employee, a volunteer, a household member or any other person having regular contact with the children is, has or has been any of the following:

...

2. Convicted of a felony, misdemeanor or other offense that substantially relates to the care of children or activities of the center.

...

6. Had a child care license or certification revoked or denied within the last 5 years.

7. Violated any provision of this chapter or ch. 48, Stats., or fails to meet the minimum requirements of this chapter.

8. Made false statements or withheld information.

(b) The department may deny, revoke, refuse to renew or suspend a license, initiate other enforcement actions specified in this chapter or in ch. 48, Stats., or place conditions on the license if the applicant or licensee is not fit and qualified as determined under sub. (2).

Wis. Admin. Code §§ DCF 250.11(8)(a)2, 6, 7, 8, (8)(b).

I. Failure to Disclose Information Relating to Prior Convictions on a BID

The Department has alleged that petitioner failed to disclose information relating to her prior conviction on the BID, which is the basis for denial of the license. To be clear, petitioner did disclose that she had been convicted of a crime, and therefore, she was not untruthful; however, petitioner failed to follow the instructions and list the specifics of the crime for which she was convicted. While petitioner clearly did not follow the instructions, it does not appear that petitioner was attempting to be deceitful. If petitioner was trying to be deceptive, she likely would have checked “No” in response to the question asking if she had ever been convicted of a crime. Instead, she checked “Yes” and filled out the form.

Petitioner’s reason for failing to list her conviction was that she believed that the Department would discover that information when she signed the form and paid the fee to have the background check

completed. My impression is that petitioner did not recall the specifics of her conviction. Regardless, the Department is correct that petitioner omitted information, but given the circumstances of the conviction having occurred more than ten years ago, it appears reasonable that petitioner did not recall all of the information and believed the Department would find it during the background check. Petitioner should have completed the form more thoroughly, but it is not reasonable to deny the license based on this fact alone.

II. Convictions that substantially relate to the care of children/ activities of a child care center.

The second issue is with respect to the denial of the license based on petitioner's criminal conviction. Petitioner was found guilty of misdemeanor Resisting or Obstructing an Officer, with a conviction date of September 18, 1998 and an arrest date of December 19, 1996. The complaint, which was received into evidence, alleged that petitioner provided a false name to a police officer when stopped for a traffic matter. After extensive questioning and investigation, petitioner eventually provided her correct name and information. Petitioner had been fearful that there may have been warrants out for her arrest, and therefore provided a false name to the officer to avoid detention.

While I agree with the Department that the offense of Resisting or Obstructing an Officer may substantially relate to the care of children, I am not convinced that it always does. In this matter, the offense occurred more than ten years ago, and the petitioner eventually provided the correct information to the police officer. Though petitioner was not truthful or candid and acted in a deceptive manner, this is an offense that oftentimes results in an ordinance violation and not a criminal conviction. For all of those reasons, petitioner's 1998 conviction alone is not enough to form the basis of a denial.

III. Petitioner is not "fit and qualified" for licensure.

The Department's final basis for denial is that petitioner is not fit and qualified for licensure. *See* Wis. Admin. Code §§ DCF 250.11(8)(a)7 and (8)(b). It should be noted that "fit and qualified" is defined as displaying the capacity to successfully nurture and care for children and may include consideration of any of the following:

- (a) Abuse of alcohol or drugs.
...
- (b) A history of a civil or criminal conviction or administrative rule violation that substantially relates to caring for children, as described in ch. DHS 12.
...
- (c) Exercise of unsound judgment.
...
- (d) A history of civil or criminal offenses or any other action that demonstrates an inability to manage the activities of a center.

Wis. Admin. Code § DCF 250.03(11).

I must agree with the Department that the petitioner's history as it relates to her own children and her inability to manage her own finances rises to the level that justifies a denial of a family care license. While petitioner's children are now mostly grown, petitioner's mistakes with her children were severe and apparently occurred largely to neglect due to petitioner's drug habit. Petitioner did not deny any of the allegations that were made against her and acknowledged that she made many mistakes while she was on drugs. She further demonstrated immense regret and remorse for the decisions that she made in her past. Nevertheless, petitioner's mistakes in caring for her children (or failing to care for her children), as

noted in FOF #9 above, were severe, to say the least. Even though petitioner has demonstrated a change in her lifestyle for which she should be commended, I would have reservations allowing her to have a license to care for others' children at this point. That is not to say that petitioner should never qualify for such a license, but it has been less than ten years since petitioner has been free of illegal substances, and it is simply too soon to determine if petitioner is ready for such a responsibility.

Moreover, petitioner has demonstrated an inability to manage her finances. By petitioner's own testimony, she had to file for bankruptcy just three years ago. According to court records, petitioner has a financial judgment against her as recently as 2009 (FOF #7a). Running a child care facility is more than caring for children, it is also the operation of a business. Petitioner testified that she is working on satisfying her debts, as noted above in FOF #7, but she is still quite far from accomplishing her goal. The Department's denial of petitioner's license application is reasonable in this respect.

Petitioner's history, in general, raises doubt as to whether petitioner meets the minimum requirements necessary in order to successfully operate a child care center. Given the extent of petitioner's civil judgments and forfeitures, it is reasonable to conclude that petitioner has not demonstrated the sound judgment necessary to qualify for a license. Again, this does not mean that petitioner never will meet those requirements; it simply means that it is too soon for petitioner to take on the tremendous responsibility of operating a family child care center. It will be noted that petitioner has taken strides toward turning her life around, and if petitioner continues in the same direction that she has taken in the last three to five years, then it is possible that one day she will satisfy the requirements to be able to operate a child care center. For now, based on all of the circumstances described above, I must find that petitioner does not meet the minimum requirements and is not fit and qualified to operate a child care center.

CONCLUSIONS OF LAW

The Department correctly denied the petitioner's application for a family child care license because she is not fit and qualified to operate a center, pursuant to Wis. Admin. Code § DCF 250.11(8)(b).

NOW, THEREFORE, it is ORDERED

That the petition for review 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.

Catherine G. Demski
Administrative Law Judge
Division of Hearings and Appeals