



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

DECISION

Rosie's Childcare Center
1935 West Silver Spring Drive
Milwaukee, WI 53209

ML-10-0066

Pursuant to petition filed February 2, 2010, under Wis. Stat. § 227.44, to review a decision by the Department of Children and Families, a hearing was held on April 27, 2010, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly ordered petitioner to cease center provided or contracted transportation services effective January 29, 2010.

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

PARTIES IN INTEREST:

Petitioner:

Rosie's Childcare Center, by

Rose Northern
1935 West Silver Spring Drive
Milwaukee, WI 53209

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:

Marina Croft
Division of Hearings and Appeals

Also present:

Mark Mitchell, DCF Licensing Specialist
Angela Lahr, DCF Licensing Specialist
Jennifer Sabree, DCF Licensing Supervisor

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County. She is a licensed child care provider.
2. On April 22, 2008, the licensing specialist conducted a visit to petitioner's child care center. Petitioner was cited for several violations; see Exhibit 1-R-7. A non-compliance statement was issued and petitioner completed a correction plan.
3. On July 16, 2008, the licensing specialist conducted a visit to petitioner's child care center. Petitioner was cited for several violations; see Exhibit 1-R-8. A non-compliance statement was issued and petitioner completed a correction plan.
4. On November 2, 2009, the licensing specialist conducted a visit to petitioner's child care center. Petitioner was cited for several violations; see Exhibit 1-R-10. A non-compliance statement was issued and petitioner completed a correction plan.
5. On November 10, 2009, the licensing specialist conducted a visit to petitioner's child care center. Petitioner was cited for several violations; see Exhibit 1-R-13. A non-compliance statement was issued and petitioner completed a correction plan.
6. On January 15, 2010, the licensing specialist conducted a visit to petitioner's child care center. Petitioner was cited and re-cited for several transportation violations including: exceeding the age range specified in the license, transporting children in a vehicle without a safety alarm, failing to provide a certificate of insurance with the required liability coverage, failing to maintain current an accurate daily attendance, failing to maintain emergency information in vehicle, failing to verify employee driver qualifications and records, failing to use appropriate child restrains during transport, failing to maintain proper vehicle condition, failing to ensure children exit vehicle, failing to maintain a list of children transported and the vehicle scheduled routes and stops on file, failing to provide vehicle condition report, failing to maintain a first aid kit on each vehicle used to transport children. See Exhibit 1-R-14.
7. On January 28, 2010, the Department of Children and Families (DCF) issued a Notice of Order, Sanctions and Appeal Process and an Imposed Plan of Correction to petitioner ordering that she ceased all center provided or contracted transportation services until further notice from DCF.
8. On February 2, 2010, petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Wis. Stat. § 48.715 **Sanctions and penalties** states, in pertinent part, that:

(2) If the department provides written notice of the grounds for a sanction, an explanation of the types of sanctions that may be imposed under this subsection and an explanation of the process for appealing a sanction imposed under this subsection, the department may order any of the following sanctions:

(a) That a person stop operating a child welfare agency, shelter care facility, group home, or child care center if the child welfare agency, shelter care facility, group home, or child care center is without a license in violation of s. 48.66 (1) (a) or a probationary license in violation of s. 48.69.

(b) That a person who employs a person who has had a license under s. 48.66 (1) (a) or a probationary license under s. 48.69 revoked within the previous 5 years terminate the employment of that person within 30 days after the date of the order. This paragraph includes employment of a person in any capacity, whether as an officer, director, agent or employee.

(c) That a licensee stop violating any provision of licensure under s. 48.70 (1) or rule promulgated by the department under s. 48.658 (4) (a) or 48.67.

(d) That a licensee submit a plan of correction for violation of any provision of licensure under s. 48.70 (1) or rule promulgated by the department under s. 48.658 (4) (a) or 48.67.

(e) That a licensee implement and comply with a plan of correction provided by the department or previously submitted by the licensee and approved by the department.

(f) That a licensee close the intake of any new children until all violations of the provisions of licensure under s. 48.70 (1) and the rules promulgated by the department under s. 48.658 (4) (a) or 48.67 are corrected.

(g) That a licensee provide training for the licensee's staff members as specified by the department.

(Emphasis added). Wis. Stat. § 48.715(2). DCF also has the authority to place conditions or restrictions on the license if the applicant violated *any* provisions of Chapter 48 or DCF 250. Wis. Stat. § 48.65(1), Wis. Admin. Code § DCF 250.11(8)(a)7.

In this case, the DCF proved by the preponderance of the evidence that petitioner violated provisions of Chapter 251, from April 22, 2008 and January 15, 2010, when she was cited and re-cited for serious and/or chronic transportation rule violations which included: exceeding the age range specified in the license, transporting children in a vehicle without a safety alarm, failing to provide a certificate of insurance with the required liability coverage, failing to maintain current an accurate daily attendance, failing to maintain emergency information in vehicle, failing to verify employee driver qualifications and records, failing to use appropriate child restrains during transport, failing to maintain proper vehicle condition, failing to ensure children exit vehicle, failing to maintain a list of children transported and the vehicle scheduled routes and stops on file, failing to provide vehicle condition report, failing to maintain a first aid kit on each vehicle used to transport children.

The DCF licensing specialists testified that the January 15, 2010 visit was prompted by a parent complaint; the complaint alleged that a child had been left at school for several hours on two consecutive occasions. The licensing specialists indicated that during the visit two of the children present were not signed in and that petitioner had been previously cited for this violation on the four previous visits; that one of the driver's did not have a valid driver's license and had a conviction for operation of a vehicle after suspension; that the vehicle used to transport children was littered with garbage; that a child was transported without the required booster seat; that the vehicle did not have a list of transported children, a transportation route and/or the scheduled stops. The licensing specialists also indicated that petitioner the transportation vehicle(s) did not have the required vehicle liability insurance coverage, the safety alarms installed, the inspection/condition report, first-aid kit, and/or children's emergency information.

At the hearing, petitioner testified that the parent complaint was blown out of proportion; the incident only happened once and that she promptly picked up the child from school when the mother called to let her know that the child was not picked up. Petitioner explained that she has only one van for child care transportation and that her personal vehicle was only used in this occasion because she had to retrieve the child immediately. Petitioner also indicated that her daughter did not know that she had to check the driver records of all employees and that this particular employee was not aware that his license was suspended and/or was no longer valid. Petitioner also testified that she was aware of the numerous visits that were conducted by the DCF and that she completed the correction plans. She does not deny that the majority of the violations occurred, rather, she believes that she has corrected the violations immediately and that she deserves a second chance.

However, the evidence and testimony presented clearly indicate that petitioner had numerous licensing visits for which she received compliance reports that gave her multiple opportunities to correct the violations and she nonetheless failed to do so. As a licensed child care provider it was her sole responsibility to ensure compliance and to be aware of the rules and regulations, and the consequences of such violations. The rules are very clear in that *any* violation of the rules is sufficient to impose restrictions or conditions on the child care license. Therefore, I must conclude that the Department correctly ordered petitioner to cease center provided or contracted transportation services effective January 29, 2010.

CONCLUSIONS OF LAW

The Department correctly ordered petitioner to cease center provided or contracted transportation services effective January 29, 2010.

NOW, THEREFORE, it is ORDERED

That the matter herein be and is hereby dismissed.

REQUEST FOR A REHEARING

This is a final hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than 20 days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in Wisconsin Statutes § 227.49. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. Appeals must be served on the Office of the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, 2nd Floor, Madison, Wisconsin, 53703.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to circuit court is in Wisconsin Statutes §§ 227.52 and 227.53.

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

Marina Croft
Administrative Law Judge
Division of Hearings and Appeals