

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. A-05/09-282
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department for Children and Families, Child Development Division (CDD), that petitioner violated the child care licensing regulations. The issue is whether the petitioner has violated the applicable regulation.

The facts are not in dispute. The parties have submitted written argument in support of their positions.

FINDINGS OF FACT

1. The petitioner operates a Family Day Care home and has done so for approximately eight years.

2. On April 2, 2009, Licensor L.R. inspected petitioner's family day care home. Licensor L.R. learned that petitioner had hired a new assistant, C.H., approximately two weeks before the inspection but that petitioner had not submitted the forms for a records check to the CDD.

3. On April 2, 2009, Licensor L.R. gave petitioner the form for a records check with the instructions that C.H. sign the form and that petitioner should mail the completed form to CDD by April 3, 2009.

4. Petitioner spoke with L.R. outside and put the form in her pocket. Petitioner meant to have C.H. sign the form but got caught up in the children's activities and did not have C.H. sign the form.

5. On April 6, 2009, CDD sent petitioner a Licensing Site Visit Form that set out the violation of I.4.a.

6. C.H. was scheduled to return to work on April 17, 2009. On that day, C.H. signed the form and disclosed that she had a felony conviction. Petitioner terminated her employment that day.

7. Petitioner did not send in the form to CDD on April 17, 2009. Petitioner was on vacation from April 18, 2009 to April 26, 2009. According to petitioner, she forgot to mail the record check that week because she also came down with the stomach flu.

8. CDD received the form on April 27, 2009.

9. CDD sent a Licensing Site Visit Form dated April 29, 2009 citing petitioner with a violation of Regulation I.4.a.

10. Petitioner appealed the violation on May 11, 2009. A Commissioner's Review was held and the Commissioner upheld the violation in a letter dated June 25, 2009.

ORDER

The Department's decision is affirmed.

REASONS

The CDD has promulgated regulations governing the operation of Family Day Care Homes to ensure the quality of care for children and the protection of children. The pertinent regulation in this case is Section I.4.a. which states:

The following person may not operate, reside at, be employed at or be present at a Family Day Care Home:

a. persons convicted of fraud, felony or and offense involving unlawful sexual activity or other bodily injury to another person including, but not limited to abuse, neglect or sexual activity with a child;

Ordinarily, record checks are part of the hiring process. Operators of Family Day Care Homes have an obligation to forward the applicable form to CDD for a records check. The regulation is one mechanism to ensure the safety of children attending Family Day Care Homes. Prompt action prevents the possibility of danger.

Petitioner hired C.H. without a background check. The Licensor did not immediately cite the petitioner on April 2, 2009 but gave petitioner the opportunity to correct her error by mailing in a signed form by April 3, 2009. Given the late return of the form on April 27, 2009, CDD cited petitioner for a violation.

Although petitioner argues that this is an isolated incident that will not occur again, the facts support the Department's decision to issue a violation. Although petitioner argues that the regulations do not state that a records check be done prior to hiring a child care employee, it is only prudent to do so to avoid the potential that the person does not meet the criteria for a child care worker, and, in certain instances, to allow the facility to obtain a variance as petitioner was subsequently able to do for C.H.

Based on the foregoing, the Department's decision to issue a violation is affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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