

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-05/10-252
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department for Children and Families, Child Development Division (CDD), revoking her registration to operate a Family Child Care Home. The issue is whether the Department's decision to revoke petitioner's registration is an abuse of discretion.

The following decision is based on the evidence adduced at hearing.

FINDINGS OF FACT

1. The petitioner has operated a registered Family Child Care Home since December 2007. The petitioner has a Bachelor's degree in psychology and education.

2. The petitioner provides care in her home to six children. At the time of hearing, the children ranged in age from one to four years old.

3. The petitioner needs to re-register with the CDD annually. Petitioner's re-registration date was January 16, 2010.

4. K.A. is the CDD Child Care Licensing Supervisor. K.A. explained that the CDD does not have a sufficient number of licensors to visit each child care program annually. The CDD relies on the re-registration process to ascertain whether the child care programs are in compliance with state regulations. These regulations govern the safe operation of each program and the requirements for registrants so they can adequately care for the children in their care. For example, the training requirement gives registered child care providers tools to provide care and programming for their charges and information necessary to run a business. Or the Lead Exposure Assessment ensures that facilities are in compliance with lead paint laws and regulations.

5. As part of the re-registration process, the registrant needs to provide documentation that he/she has complied with the (1) annual training requirements, (2) annual CPR recertification, (3) annual heating system inspection, (4) annual lead exposure assessment, (5) tax standing and child support obligations, and (6) other records.

6. CDD sent petitioner a letter sixty days prior to her registration date to notify her when she needed to complete the re-registration process.

7. CDD sent the petitioner a follow-up letter fifteen days prior to her registration date to notify her that she needed to complete the re-registration process by January 16, 2010.

8. Petitioner started the re-registration process in January 2010 after receipt of the fifteen day notification letter. Petitioner completed the on-line registration form on or about January 4, 2010.

9. On January 5, 2010, B.M., CDD licensing technician, sent petitioner a letter indicating that petitioner's re-registration was incomplete. B.M. wrote the following information was missing:

(a) Tax Standing. . . . (form enclosed)

(b) Program Information: Please send a list of trainings, with hours and topics. **6 hours of training is required and 2 additional hours for the food program.** Please send a copy of your current CPR card.

(c) Census. . . . (forms enclosed)

(d) Heating System Inspection. . . . (form enclosed)

(e) Lead Exposure Assessment. . . . (form enclosed)

(f) Child Support. . . . (form enclosed)
(emphasis added.)

Petitioner was informed to send the above information to CDD by January 28, 2010 or her re-application would be considered incomplete and could be denied.

10. Petitioner spoke to B.M. but was unclear when these conversations took place. Petitioner did submit materials for some of the requests in the January 5, 2010 letter but did not do so by the January 28, 2010 deadline.

11. On March 4, 2010, B.M. wrote petitioner that certain materials were still missing. The missing materials included documentation of four hours of training and the Lead Exposure Assessment. The letter noted a conversation between B.M. and petitioner in which petitioner indicated that she was taking the Essential Maintenance Practice (EMP) training on April 27, 2010 and would then be able to do the Lead Exposure Assessment herself. CDD gave petitioner a deadline of May 2, 2010 by which to submit her documentation. She was given written notice that if she did not comply, her re-registration would be considered incomplete and could be denied.

12. Petitioner did not attend the April 27, 2010 EMP training because her substitute did not appear to care for the children. Petitioner arranged for a certified inspector to do the EMP, but he did not complete his work until May 2, 2010. CDD received the EMP certification on or about May 7, 2010.

13. Petitioner did not meet the May 2, 2010 deadline to document completion of four hours of training and to provide the EMP documentation.

14. On May 11, 2010, the Department sent petitioner a Notice to Revoke her registration effective June 11, 2010. The Department based their decision on the petitioner's failure to comply with the deadlines for her current re-registration and her lack of timeliness in a prior re-registration. The petitioner timely appealed this decision. The Commissioner's Review affirmed the Notice to Revoke but included a provision that petitioner could reapply if she fulfilled her training requirements and other requirements. Her Registered Child Care Home has remained in operation pending a decision by the Human Services Board.

15. Petitioner did not comply with the original deadline or the two extensions for her re-registration.

16. Petitioner did not comply with the training requirements to keep her registration.

ORDER

CDD's decision to issue intent to revoke petitioner's registration is affirmed.

REASONS

The CDD has promulgated regulations governing the operation of Child Care Programs including Registered Child Care Homes to ensure the quality of care for children and the protection of children. The regulations governing petitioner's program are found in the Regulations for Family Day Care Homes (hereinafter Reg.).

The CDD has the authority to revoke a license when there has been a violation of law or regulation. Regs. VI.9 and 12.

The CDD requires each registered provider to submit annual re-registration forms. The re-registration process allows CDD to determine whether the provider is maintaining the safety of the registered child care home (annual lead paint assessment and annual heating system assessment), whether the provider is in compliance with certain laws (tax compliance), and whether the provider is continuing his/her education to maintain his/her competence as a child care provider.

The CDD bases their intention to revoke on petitioner's repeated failure to meet deadlines to provide documentation of her compliance with safety and training requirements. The petitioner does not dispute that she started the process after the fifteen day notice letter and does not dispute that she did not meet deadlines, including the extensions provided her. Petitioner's noncompliance with deadlines over a five month period indicates a lack of care.

Petitioner disputes the CDD decision that she is in noncompliance with the training requirements. She argues that her food program training should count towards the six annual education credits she needs.

Reg. VI. 15 states:

In addition to CPR training, the Registrant shall attend annually at least six (6) hours of interactive developmental activities in areas such as child development, discipline/behavior management, health and safety, age appropriate activities, first aid, child abuse prevention and detection, working with parents, children with special needs, the child care environment, community early childhood resources or other topics approved by the Division. At the time of re-registration, the Registrant shall list the activities attended, as well as their dates and places of occurrence.

Food Program training is not included in the list in the above regulation nor has it been approved by the Division for inclusion in the mandatory six hours of continuing education.

In fact, petitioner was put on notice that training for the food program was not so included in the January 5, 2010 letter she received from B.M.

If there is a factual basis to the CDD's decision, the Board may not substitute their judgment but limit their review to whether the CDD acted arbitrarily, capriciously, or otherwise abused their discretion. Huntington v. SRS, 139 Vt. 416 (1981), Fair Hearing Nos. 15.006; 15,027; 15,622, and 16,485.

There is a factual basis to the CDD's decision. There is no evidence that the CDD acted arbitrarily, capriciously or abused their discretion.

In the Commissioner's Review of July 30, 2010, the Commissioner has stated the possibility of petitioner reapplying as a registered child care provider if she has her training and other requirements in order.

Based on the foregoing, the CDD did not abuse their discretion by issuing an intent to revoke petitioner's license. Accordingly, CDD's decision is affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rules No. 1000.4D.

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