

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. A-07/16-734
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Appeal of)
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)

INTRODUCTION

Petitioner appeals the denial of her application for a foster home license by the Department for Children and Families ("Department" or "DCF"), through its Residential Licensing program. The Department moved for summary judgment based on a statement of uncontested facts. Petitioner submitting a packet of photos, documents, and handwritten argument in response to the Department's motion, with the record closing December 19, 2016. The primary issue is application of the "abuse of discretion" standard governing Department denials of foster home licenses. The following is adduced from the parties' filings.¹

¹ Consideration of petitioner's appeal was delayed due to her requests to extend the deadline for submitting a response to the Department's motion. Petitioner submitted approximately 300 pages, comprising photographs, documents with her comments, and including approximately 150-200 pages of handwritten argument and factual assertions.

FINDINGS OF FACT

1. Petitioner is 56 years old and applied for a foster home license in August of 2015. The Department denied her application by letter dated on June 23, 2016.²

2. According to the June 23 letter, the application was denied on the following grounds, with the regulation quoted and the Department's stated basis in bold (the letter is written in the first person, but signed by three Department staff, including the Residential Licensing program director):

- a. "037 A license may be denied or revoked if the applicant or licensee fails to meet any licensing regulations." **You do not meet the following regulations: 038.1, 038.3, 103, 103.1, 200, 201, 201.1, 203, 205, 322.**
- b. "038 A license may be denied or revoked if the applicant, licensee or other member of the household: 038.1 Has been charged with or convicted of a criminal offense." **[Petitioner's romantic partner who lives in her home] was convicted for Disorderly Conduct in 1985. [He] was convicted for Simple Assault in 1993."**
- c. "038.3 Has abused or neglected a child." **[Petitioner's partner] was substantiated for**

² Although it is not material to the outcome here, petitioner mainly seeks a foster home license to provide care to one or more of her grandchildren who were or are the subject of a Family Division Child In Need of Supervision ("CHINS") matter. However, the denial or granting of a foster home license does not determine state or family-based placements of children. See 33 V.S.A. 4905(c).

physical abuse in 1997. [He] was sent the paperwork necessary to begin the process of appealing his substantiation, but at the time of this writing has not begun the appeals process.

- d. "103 Applicants and licensees shall: 103.1 Provide complete and truthful information on the licensing application and in the licensing process." You stated throughout the foster care licensing process that [petitioner's partner] is your roommate. Throughout the course of reviewing your foster care application and contacting your references, DCF has learned that you and [he] have engaged in couples counseling together. Further, in a letter written by [him] contained in the packet of information [petitioner] sent to DCF Family Services, [he] asked that DCF not "take away the only home and love [he has] ever known" by asking him to leave [petitioner's] home in order for her to become a licensed foster parent. These facts taken together indicate that [he] is your partner rather than your roommate and should have been included as a co-applicant on your foster care application.

In your foster care licensing application, you stated that you had filed a Relief from Abuse order against the father of your children. However, you did not disclose that you had also been the defendant in a Relief from Abuse Order filed. . . in 1995.

- e. "200 Household members in a foster home must be responsible, emotionally stable, emotionally mature people of good character as exemplified by past performance and general reputation. 201 Applicants and licensees shall exhibit: 201.1 Healthy patterns of social and interpersonal relationships." Your interactions with me both via phone and via text have raised concerns for several reasons. First, I, along with [other DCF staff], have each explained the foster licensing process to you on multiple occasions. During discussions with me on the phone, you have become agitated and confrontational during my explanation of this process, often interrupting and providing

information not pertinent to the foster care licensing process.

You have continued to request information from me regarding your grandchildren's open case, after I have explained that the Residential Licensing and Special Investigations Unit does not make case planning or placement decisions in any Family Services cases. I have attempted to clarify RLSI's role, which is to only determine whether foster care applicants meet foster care licensing regulations.

Your tumultuous relationship with your daughter. . . is also concerning. Historical information taken from reports to DCF Family Services along with information you included in the packet you sent to me and other DCF staff members indicate that the relationship between you and your daughter is strained, complex, and has been volatile at times.

Finally, staff members at the [local district office] have expressed concern regarding your stability and mental health based on the way you have interacted with staff there and your presentation at the district office.³

- f. "203 All members of the household shall be free from physical conditions, mental limitations, or emotional problems, which would have an adverse effect on the physical or emotional well-being of foster children." You have reported to me that you have a Traumatic Brain Injury, which makes it difficult for you to retain information and organize thoughts. Conceivably as a result of this injury, you have struggled to answer direct questions and keep your comments during this worker's conversations with you via phone and messaging focused on the foster care licensing process.

³ The Department has a no-trespass order against petitioner with respect to the Family Services unit of the local district office.

Your primary care physician did not confirm you have a TBI diagnosis, but did report that you have a diagnosis of an Anxiety Disorder for which you are prescribed Paxil.

Professional references wouldn't commit to support or were generally discouraging of your ability to provide foster care.

- g. "205 Foster parents shall demonstrate that they have sufficient income to support the family, exclusive of foster children, without reliance on the basic foster care reimbursement." **According to your foster care licensing application, you are not currently employed and have no income aside from the SSI subsidy you receive. [Your] application also does not indicate that [partner/housemate] is employed.**

3. The Department's statement of undisputed facts essentially asserts the factual basis for the denial of the license as described above.

4. As referenced above, in response to the Department's Motion, petitioner submitted approximately 300 pages of photographs, documents (many of which have handwritten notes, presumably made by petitioner), and handwritten argument.

5. Petitioner's submission includes, among other things, assertions that she has involuntary muscle spasms, was misdiagnosed and undiagnosed with numerous conditions for several years, has suffered "serotonin poisoning" and lead poisoning, and has a traumatic brain injury. She submitted a

letter (to the Board) dated December 7, 2016, from her psychologist stating the following:

[Petitioner] is a conscientious woman who is attempting to gain custody of her grandchildren, currently under the care of DCF.

She offers a stable home and nurturing environment withn[sic] the context of a reinvigorated nuclear family. Her ongoing psychotherapy has not revealed any bases for concerns around her parenting skills, rather psychotherapy has helped substantiate her commitment and dedication to provide for the physical and emotional needs of her grandchildren.

[Petitioner] has multiple resources which she is invested into gaining custody of her grandchildren, as she works tirelessly to achieve family reunification.

We encourage and support these efforts and respectfully request [she] be awarded custody of her grandchildren.

6. Petitioner does not dispute that she failed to disclose that she had been the subject of a Relief from Abuse Order in 1995; instead, she appears to blame the person who filed for the order, as well as the police officer(s) involved, alleging she was dissuaded from contesting the order.

7. Petitioner disputes that her "roommate" has been substantiated and convicted of all the offenses that the Department lists, by focusing on Department counsel's misspelling of his name in counsel's filings to the Board, and proffering that the Department may be confusing him with

his son (of the same name). However, the Department includes copies of records which verify the convictions and substantiation, with the correct spelling of his name and correct date of birth.

8. Petitioner disputes that her "roommate" is also her romantic partner, but does not dispute that they, at one point, attended couples counselling together.

9. Petitioner alleges "politics" at the local DCF office, and what amounts to corruption or conspiring against her attaining a foster home license and/or the opportunity to provide a home to her grandchildren.

10. Petitioner asserts that she has a stable home environment, and has had the financial means to purchase her own home. She also asserts that her "roommate" plans on starting a business and earning income.

11. Petitioner indicates that she has fired the physician who provided what she considered to be false information to the Department.

12. Much of what petitioner submits relates to the Family Services matter involving her daughter and grandchildren. She asserts that her family (starting with her grandparents) is "disliked" by the state, no one is willing to believe "her side of the story," and she is being

blamed for the actions of previous generations. She alleges numerous instances of DCF mishandling her daughter and grandchildren's cases, and that her grandchildren were wrongly taken from her daughter.

13. Petitioner's submission includes a letter dated July 19, 2016 from a mental health counselor, indicating that she is engaged in couples counselling with the individual she asserts is only her roommate. The same mental health counselor wrote a letter on her behalf dated August 22, 2016, that she continues to be a strong advocate for her grandchildren, and has "shown her ability to be a positive, proactive and caring role model."

14. Petitioner's submission includes numerous letters of support from neighbors, friends, and community members. It further includes letters from more than 20 years ago related to what appear to be issues regarding her daughter.

15. Petitioner also submits a letter from her daughter dated August 10, 2016 requesting that her mother receive guardianship of her children. Much of what petitioner submits is undated and of limited or no relevance to the Department's foster license decision; instead, it is directed at the CHINS matter concerning her grandchildren as well as

her desire to provide a home (through placement, guardianship, or whatever other means) for her grandchildren.

16. Based on the evidence submitted, petitioner's assertion that she has no romantic connection with her "roommate" is rejected; the evidence establishes the opposite. Further, while petitioner asserts a dispute with nearly all the Department's evidence, there is no credible dispute regarding the fact of the criminal offenses, substantiation, and relief from abuse order (all described above) involving her and her partner; or that petitioner failed to report certain material information (described above) in her application.⁴ These facts are therefore found, based on the record.

17. Petitioner's genuine interest in caring for the needs of her grandchildren is evident.

ORDER

The Department's denial is affirmed.

REASONS

The Board has jurisdiction over appeals of foster home license denials. 3 V.S.A. § 3091(a). The Board has

⁴ Moreover, petitioner does not directly rebut the Department's consideration and assessment of the limitations of her fixed income.

consistently held that the Department, standing *in loco parentis* of the children in its custody, is entitled to a high degree of deference and discretion in matters of foster home licensure. See, e.g., Fair Hearing No. T-01/08-13. Petitioner must therefore establish that the Department abused its discretion in denying the license. *Id.*

The Department has adopted regulations governing foster home licenses pursuant to 33 V.S.A. § 306. Prospective licensees must meet the requirements of the regulations. See *Licensing Regulations for Foster Homes in Vermont*, Regulations §§ 010 and 037. The Department's decision rests on the following regulations:

- Regulations 038, 038.1 and 038.3: "A license may be denied or revoked if the applicant, licensee or other member of the household: Has been charged with or convicted of a criminal offense" and "A license may be denied or revoked if the applicant, licensee or other member of the household: Has abused or neglected a child."
- Regulation 103.1: "Applicants and licensees shall provide complete and truthful information on the licensing application and in the licensing process."
- Regulation 200, 201 and 201.1: "[200] Household members in a foster home must be responsible, emotionally stable, emotionally mature people of good character as exemplified by past performance and general reputation. [201] Applicants and licensees shall exhibit: [201.1] Healthy patterns of social and interpersonal relationships."

- Regulation 203: "All members of the household shall be free from physical conditions, mental limitations, or emotional problems, which would have an adverse effect on the physical or emotional well-being of foster children."
- Regulation 205: "Foster parents shall demonstrate that they have sufficient income to support the family, exclusive of foster children, without reliance on the basic foster care reimbursement."

Notably, any of these requirements in and of themselves could form the basis for a license denial. See *Licensing Regulations for Foster Homes in Vermont*, §§ 010 and 037. And, abuse of discretion arises when the decision is made for untenable reasons or the record has no reasonable basis for the decision. See Fair Hearing No. M-04/10-223, citing *State v. Putnam*, 164 Vt. 558, 561 (1996); *USGen New England, Inc. v. Town of Rockingham*, 177 Vt. 193 (2004).

Petitioner's failure here to disclose material information on her application is, in and of itself, a sufficient basis for the Department to deny her a foster home license. The criminal convictions and substantiation of a household member, along with the relief from abuse order against petitioner, are, in and of themselves, sufficient basis for the Department to deny petitioner a foster home license (and certainly the case without credible evidence of

why the Department should not take these offenses into consideration). Even assuming arguendo that some facts in the record below may credibly be disputed, under an abuse of discretion standard the undisputed record is sufficient to find in the Department's favor on summary judgment - as there is a "reasonable basis" for the license denial here.

Under these circumstances, the Department's denial of a foster home license to petitioner is consistent with the applicable regulations and must be affirmed by the Board. See 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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