STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 15,232
	)	
Appeal of	)	

INTRODUCTION

The petitioners (Mr. and Mrs. C) appeal the decision by the Department of Social and Rehabilitation Services (SRS) denying their application for a foster care license.[1] The issue is whether the Department's decision is in accord with the pertinent statutes and regulations.

FINDINGS OF FACT

Except as specifically noted below, the essential facts are not in dispute. In July, 1997, SRS placed a foster child in the petitioners' home on a provisional basis pending the petitioners' application to obtain a foster home license. On their application the petitioners averred that neither of them had any criminal convictions.

SRS conducts routine criminal record checks of all foster home applicants. It received information from the Vermont Criminal Information Center that the Mr. C had been convicted of several crimes: forgery and false pretenses in May, 1993, and simple assaults in September, 1991, and February, 1992.

---

[1]Mrs. C. was the subject of Fair Hearing No. 14,993, decided by the Board on 8/29/97, which concerned her license to operate a family day care home. Much of the factual basis of the Department's decision in this case is identical to that set forth in Fair Hearing No. 14,993.

The petitioners do not dispute those convictions, but they maintain that the crimes occurred during a difficult period in Mr. C.'s life, and that he has reformed and is now a responsible and respected member of the community. Mr. C. maintains that when he applied for his foster home license he had been under the impression that all his prior criminal offenses had been dismissed. Although Mr. C. struck the hearing officer as a sincere and candid individual, his assertion that he was unaware of the existence of his criminal record strains credulity. There is no evidence disputing the petitioners' claim that Mr. C. has reformed, and that he is now a respected member of the community who is successful and highly regarded in his work with troubled youths.

At about the same time that the Department received the information regarding Mr. C.'s criminal record, it received a complaint that the petitioners had not allowed a child in their day care to wear a religious necklace. The complaint was that the petitioners had forbidden the child of an Asian refugee family to wear a Buddhist religious symbol around his neck when he was in the petitioners' day care. The petitioners admitted that they had done this (and would do it again) because of their fundamentalist Christian belief that such symbols are satanic idols that they cannot allow in their home.

On December 9, 1997, SRS mailed the petitioners a

final notice that it was denying their foster home application because of Mr. C's criminal convictions, his failure to disclose those convictions on the application form, and the petitioners' refusal to respect the religious beliefs of a child in their care. At the hearing (held on December 18, 1997) the Department admitted that it has the discretion to grant licenses even when there have been past criminal convictions, but that as a practice it never does so in cases in which the convictions are within the last six years.

Sometime prior to the hearing in this matter, SRS had removed the foster child who had been placed in the petitioners' home on a provisional basis. The petitioners maintain that the child was flourishing in their care and that he has regressed since his removal from their home.

ORDER

The Department's decision is affirmed.

REASONS

33 V.S.A. ə 306 authorizes the Commissioner of Social and Rehabilitation Services to issue licenses for foster homes, promulgate regulations applicable to those homes, and to deny or terminate licenses for "cause after hearing". Among the regulations promulgated by the Commissioner are the following, which appear in the

Department's Licensing Regulations for Family Foster Care:

> Section 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. . . .
>
> Section 103--Applicants and licensees shall:
>
> 103.1--Provide complete and truthful information on the licensing application. . . .
>
> Section 338--Foster parents shall respect the religious beliefs and cultural heritage of foster children, and shall not interfere with the reasonable practice of a foster child's religious beliefs.

The petitioners do not dispute that Mr. C. has relatively recent convictions for forgery, false pretenses, and simple assault. Although the petitioners' testimony regarding Mr. C.'s reformation and current reputation in the community was credible, the above regulation allows the Department the discretion to deny the licenses of persons convicted of criminal offenses; and there has been no showing in this case that the Department's exercise of discretion in that regard (or its failure to credit the petitioners' claim that they were unaware of these convictions) was unreasonable or biased against the petitioners.

Also problematic is the petitioners' refusal to allow non-Christian religious symbols to be worn in their home. Although the petitioners are sincere in their own religious beliefs, in providing foster care the exercise of those beliefs is not a sufficient basis to potentially trammel

the religious beliefs and practices of children placed in their home. Inasmuch as the petitioners admit that they will never allow the wearing of non-Christian religious symbols in their home, the Department cannot be assured that they will comply with Section 338, supra; and it must be concluded that the Department is justified in denying them a foster care license on this basis.[2]

The petitioners' home may well have been a suitable placement for the particular foster child that was temporarily in their care, but based on the above it must be concluded that the Department's decision removing that child from their home and denying them a foster care license is in accord with the applicable statutes and regulations. Therefore, the Board is bound by law to affirm that decision.[3] 3 V.S.A. ə 3091(d) and Fair Hearing Rule No. 17.

# # #

[2]The Department admits that problems in this regard might be lessened if only Christian children were placed in the petitioners' home. The insoluble problem, in the Department's view, is that the petitioners' practices would place on a restraint on a child's right to change to or develop religious beliefs that differ from those of the petitioners.

[3]Board member Robert Orleck abstains from the decision in this matter.