

QA

[REDACTED] * BEFORE MICHELLE W. COLE,
APPELLANT * AN ADMINISTRATIVE LAW JUDGE
v. * OF THE MARYLAND OFFICE OF
MARYLAND STATE DEPARTMENT * ADMINISTRATIVE HEARINGS
OF EDUCATION, * OAH No.: MSDE-OCC-27A-19-08047
OFFICE OF CHILD CARE *

* * * * *

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STATEMENT OF THE CASE

On March 14, 2019, the Maryland State Department of Education's Office of Child Care (OCC) notified the Appellant that her certificate of registration to operate a family child care home was being suspended on an emergency basis for up to forty-five days. On March 15, 2019, the Appellant requested a hearing to appeal the emergency suspension.

On March 21, 2019, I held the requested hearing at the [REDACTED] County Office of Child Care in [REDACTED] Maryland, pursuant to Code of Maryland Regulations (COMAR) 13A.15.14.07. [REDACTED] Esquire, represented the Appellant, who was present. [REDACTED] Assistant Attorney General, represented the OCC.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the OCC, and the Rules of Procedure of the Office of Administrative Hearings

govern the procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); COMAR 13A.15.14; COMAR 28.02.01.

ISSUE

Did the OCC properly suspend the Appellant's family child care certificate of registration on an emergency basis?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on the OCC's behalf:

- OCC Ex. 1 Certificate of Registration, June 4, 2008
- OCC Ex. 2 Fax Cover Sheet from the Appellant to the OCC, June 25, 2016, with attachment
- OCC Ex. 3 Application for Statement of Charges, [REDACTED] 2018
- OCC Ex. 4 Statement of Charges, [REDACTED] 2018
- OCC Ex. 5 Arrest Warrant, [REDACTED] 2018
- OCC Ex. 6 Criminal Summons on Charging Document, [REDACTED] 2019
- OCC Ex. 7 District Court of Maryland Case Information, [REDACTED] 2019
- OCC Ex. 8 Circuit Court of Maryland Case Information, [REDACTED] 2019
- OCC Ex. 9 Application for Statement of Charges, [REDACTED] 2019
- OCC Ex. 10 Statement of Charges, [REDACTED] 2019
- OCC Ex. 11 District Court of Maryland Case Information, [REDACTED] 2019
- OCC Ex. 12 Circuit Court for [REDACTED] County, Criminal Hearing Sheet, [REDACTED] 2019
- OCC Ex. 13 Appellant First Statement, March 13, 2019
- OCC Ex. 14 Appellant Second Statement, March 14, 2019
- OCC Ex. 15 [REDACTED] Statement, March 14, 2019
- OCC Ex. 16 [REDACTED] First Statement, March 14, 2019

OCC Ex. 17 [REDACTED] Second Statement, March 14, 2019

OCC Ex. 18 Letter from the OCC to the Appellant, March 14, 2019

I admitted the following exhibit on the Appellant's behalf:

App. Ex. 1 Motion for Modification of Pretrial Conditions, [REDACTED] 2019; Order, [REDACTED]
[REDACTED] 2019

Testimony

The following individuals testified on behalf of the OCC: [REDACTED] Licensing Specialist, Maryland State Department of Education (MSDE) OCC; and [REDACTED] Regional Manager, MSDE OCC.

The Appellant testified on her own behalf.

FINDINGS OF FACT

Based upon the evidence presented, I find the following facts by a preponderance of the evidence:

1. On June 4, 2008, the OCC issued to the Appellant a family child care certificate of registration.

2. The Appellant operates a family child care home at her residence located at [REDACTED] [REDACTED] Maryland. She is currently approved to care for seven children with no more than two children under the age of two years.

3. At all times relevant to this matter, the Appellant lived in the child care home with her son, [REDACTED]

4. All residents of child care homes are required to submit background information to the OCC, including a medical report, consent for background check, and fingerprinting.

5. A child care home provider is required to report any changes in the home that may affect its status as a child care home, including changes in the composition of residents living in the home or criminal charges against any residents of the home.

6. On March 3, 2016, the Appellant's licensing specialist conducted an announced inspection of the Appellant's child care home. She provided a list of items to the Appellant that needed to be submitted to the regional office, including notarized release of information forms for several individuals connected to the child care home, including Mr. [REDACTED]

7. On June 25, 2016, the Appellant informed the OCC that Mr. [REDACTED] was no longer residing in the child care home.

8. On [REDACTED] 2018, police responded to a report of domestic violence committed by Mr. [REDACTED] against [REDACTED] at the child care home. Ms. [REDACTED] was Mr. [REDACTED] s girlfriend, the mother of Mr. [REDACTED] s infant son, and an approved substitute for the Appellant's child care home. Ms. [REDACTED] was visiting Mr. [REDACTED] with her infant son at the time of the reported conduct.

9. Mr. [REDACTED] was charged with two counts of second degree assault based on the following conduct:

- Pushing Ms. [REDACTED] onto his bed in his bedroom in the child care home;
- Pinning her to his bed by her neck with his hand; and
- Slapping Ms. [REDACTED] on the back of her head and the side of her face.

As Ms. [REDACTED] was attempting to place the baby in his car seat and leave, Mr. [REDACTED] stated:

"you're lucky I didn't hit you harder" and "I didn't even hit you that hard." (OCC Ex. 3).

Ms. [REDACTED] had visible redness to her neck and face when police responded to the child care home.

10. On [REDACTED] 2018, an arrest warrant was served on Mr. [REDACTED] He was released on his own recognizance the same date.

11. The Appellant did not report to the OCC Mr. [REDACTED] s arrest for domestic violence, and did not inform the OCC that he was residing at the child care home.

12. On [REDACTED] 2019, police responded to a report of a domestic dispute involving Mr. [REDACTED] and Ms. [REDACTED] at the Appellant's child care home based on Mr. [REDACTED] spitting on Ms. [REDACTED] during an argument while she was seated in her vehicle. Ms. [REDACTED] left Mr. [REDACTED] at the Appellant's child care home. Mr. [REDACTED] was charged with one count of second degree assault.

13. The Appellant did not report this incident to the OCC.

14. On [REDACTED] 2019, the Maryland Criminal Justice Information System (CJIS) submitted information regarding Mr. [REDACTED]'s arrests to the OCC.

15. On [REDACTED] 2019, the OCC obtained additional information about Mr. [REDACTED]'s charges from the District Court of Maryland for [REDACTED] County.

16. All of Mr. [REDACTED]'s court documents identified his address as the Appellant's child care home.

17. On March 11, 2019, the Appellant told OCC licensing specialist [REDACTED] that Mr. [REDACTED] was living at her child care home on [REDACTED] 2019, but was not living with her at the present time.

18. Ms. [REDACTED] informed the Appellant that she was required to submit a notarized statement indicating Mr. [REDACTED] was no longer residing in the child care home.

19. On [REDACTED] 2019, Mr. [REDACTED] appeared at his bail review hearing at the Circuit Court for [REDACTED] County and provided the Appellant's child care home address as his permanent address, which, he stated, it had been for the previous fourteen years. The Court released Mr. [REDACTED] and ordered him to reside at the Appellant's child care home until his trial in [REDACTED]

20. On March 13, 2019, the Appellant again told Ms. [REDACTED] that Mr. [REDACTED] was not residing in her child care home. In response to Ms. [REDACTED]'s request for a notarized statement

regarding Mr. [REDACTED]’s status, the Appellant faxed a written statement listing several individuals who did not reside in her family child care home, including Mr. [REDACTED]. The statement was not notarized.

21. On the evening of March 13, 2019, Mr. [REDACTED] returned to the Appellant’s home.
22. On March 14, 2019, the OCC notified the Appellant that it was suspending her family child care certificate of registration on an emergency basis, effective for forty-five days, pending an investigation or further OCC action.
23. On March 14, 2019, Mr. [REDACTED] sent a letter to the OCC stating he no longer resides at the Appellant’s child care home.
24. On March 14, 2019, Ms. [REDACTED] sent a letter to the OCC stating the incident involving herself and Mr. [REDACTED] resulted from “a misunderstood argument where the cops were called[.]” (OCC Ex. 17).
25. On [REDACTED] 2019, Judge [REDACTED] granted Mr. [REDACTED]’s Motion for Modification of Pretrial Conditions, changing his residence for pretrial release to his grandmother’s address at [REDACTED]
26. As of the date of the hearing, the OCC has not completed its investigation.
27. Mr. [REDACTED]’s criminal trial for the [REDACTED] 2018 incident is scheduled for [REDACTED] 2019.

DISCUSSION

The Maryland General Assembly has declared that minor children are incapable of protecting themselves, and when parents have relinquished the care of their minor children to others, certain potential risks arise that require “compensating measures.” Md. Code Ann., Educ. § 9.5-102(a) (2018). Consequently, Maryland has adopted the following policies:

- (1) To protect minor children whose care has been relinquished to others by the child’s parent;

- (2) To resolve doubts in favor of the child when there is a conflict between the interests of a minor child and the interests of an adult; and
- (3) To encourage the development of child care services for minor children in a safe, healthy, and home-like environment.

Id. 9.5-102(b). In furtherance of these policies, the OCC may summarily suspend a family child care home's certificate of registration if it finds that the public health, safety, or welfare imperatively requires emergency action. Md. Code Ann., State Gov't § 10-226(c)(2)(i) (2014).¹ That suspension may continue for a period of not more than forty-five calendar days. COMAR 13A.15.13.06A.

The purpose of the emergency suspension is to allow the OCC up to forty-five days to conduct an investigation of a family child care home based on information the OCC has received about the home or residents of the home. The forty-five day period allows the OCC time to conduct a thorough investigation and protects children until the OCC can determine what further course of action, if any, is warranted. My task in this hearing is not to determine whether the Appellant actually committed the violations alleged, but, rather, to determine if the OCC had a reasonable basis to believe the Appellant committed them and, if so, to determine whether a suspension is warranted. *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985) (due process is satisfied by a predetermination opportunity to respond coupled with post-termination administrative procedures as provided by law). If there is any doubt about the safety of the children in a family child care home, I am required to resolve that doubt in favor of the children, not the adult provider, by affirming the suspension pending further investigation. Md. Code Ann., Educ. § 9.5-102(b)(2) (2018).

The OCC presented undisputed evidence which established that Mr. [REDACTED] the Appellant's son and a resident of the Appellant's home, was arrested on at least two occasions for domestic violence, committed against his girlfriend and mother of his infant child, who was

¹ "The filing of a hearing request may not stay an emergency action." COMAR 13A.15.14.03C(5).

also an approved substitute for the child care home. The first instance of domestic violence actually occurred in the Appellant's bedroom in the child care home. The second instance occurred in Ms. [REDACTED] vehicle located outside the Appellant's child care home. The Appellant did not inform the OCC that Mr. [REDACTED] was living in the home or provide information to the OCC regarding either incident. When the licensing specialist assigned to the Appellant's child care home contacted the Appellant, the Appellant denied that Mr. [REDACTED] was living in the home. Based on this information, the OCC suspended the Appellant's child care certificate on an emergency basis while the OCC continued its investigation.

The OCC argues that the Appellant's child care home is not safe for children at this time because the Appellant did not report that a resident of her home was arrested for domestic violence committed in the Appellant's child care home. It maintains that the OCC must have faith in its providers to report truthful information regarding factors which may affect the child care home's status as a provider for children. The Appellant states that Mr. [REDACTED] is no longer a resident of the home, which she contends eliminates any risk to the children under her care. She asserts that she has done nothing to place the children under her care at risk of harm and maintains that her certificate should not be suspended based on allegations against Mr. [REDACTED]. For the reasons that follow, I conclude that the OCC properly suspended the Appellant's family child care certificate on an emergency basis.

[REDACTED] MSDE OCC licensing specialist, presented documents and testified regarding the history of the case, which began with an alert by the CJIS for Mr. [REDACTED]'s criminal charges. The CJIS sends alerts for criminal activity of individuals linked to child care homes. According to Ms. [REDACTED] the OCC was not alerted of Mr. [REDACTED]'s domestic violence charges until [REDACTED] 2019, almost [REDACTED] months after his first arrest, because the Appellant had not reported that he was living in her child care home and, as such, he was not identified as a direct

link to the home as a resident. Ms. [REDACTED] stated once the alert was received by the OCC, she obtained court documents showing Mr. [REDACTED]’s address as the Appellant’s child care home. When Ms. [REDACTED] asked the Appellant if Mr. [REDACTED] was residing in the home, the Appellant told her that he was living in the home when the [REDACTED] 2019 incident occurred, but was not living in her home at present.

On [REDACTED] 2019, Ms. [REDACTED] attended Mr. [REDACTED]’s bail review hearing where he reported having lived in the Appellant’s child care home for the previous fourteen years. The Court ordered Mr. [REDACTED] to be released to the Appellant’s child care home. Ms. [REDACTED] explained that the Appellant’s failure to provide truthful information regarding her son’s criminal charges and housing status constituted an emergency that placed the children in her home at risk.

[REDACTED] MSDE OCC Regional Manager, also testified on behalf of the OCC. She stated an emergency suspension was appropriate in this case based on the Appellant’s failure to provide information to the OCC which was required to alert the OCC to potential safety issues in the child care home. She explained the OCC takes domestic violence very seriously as it is a disqualifier for providers under the regulations. She also found Mr. [REDACTED]’s conduct placed the children in the Appellant’s child care home at risk because he assaulted his girlfriend and mother of his child in the child care home while his infant son was present. She believed emergent circumstances remained even if Mr. [REDACTED] was ordered to live at his grandmother’s house based on the Appellant’s failure to provide the required safety information to the OCC.

The Appellant testified she has been a child care home provider for eleven years. She agreed that she did not report her son’s residence in her home or his criminal charges. She stated he was staying “on and off” at her home because he was having problems with Ms. [REDACTED]. She reported being aware of her son’s charges on [REDACTED] and [REDACTED] but did not believe she was required to report this information unless he was convicted. She stated she complied

with Ms. [REDACTED] s requests to provide statements confirming her son's residential status and did not believe she had done anything to place the children in her care at risk. She noted that none of the children were at risk of harm at any time. The Appellant stated her child care home registration should not be suspended based on allegations against her son and agreed that she would not permit him to reside in her home now that the court ordered him to reside with his grandmother.

I accept the Appellant's testimony that she has been operating a successful family child care home for several years without incident. However, I am concerned that the Appellant's concerns for her son may impede her responsibilities as a family child care provider. The Appellant's son was charged with assaults against his girlfriend, who was also an approved substitute for the child care home. These acts occurred at the child care home in the presence of the Appellant's grandson. The Appellant did not provide any information to the OCC in violation of OCC policies and regulations, which have been established to permit an evaluation of safety conditions in the home. The potential of exposing children to violence in the child care home creates serious safety concerns which compel me to permit the OCC to continue its emergency suspension of the Appellant's family child care certificate of registration at this time.

I am not persuaded by the Appellant's testimony that she would require her son to live somewhere other than her home. During her testimony, the Appellant seemed to be focused more on whether her son's residency affected his pretrial release than violated her obligations as a child care provider. She denied that her son came to her home after his bail review hearing. Yet, when questioned regarding the order that he reside in her home, she stated he came to her home later on that evening, but did not spend the night. The Appellant consistently denied her son's residency in her home, when the evidence clearly contradicted her representations. Indeed, both acts of domestic violence occurred at her home.

The Appellant has established a history of allowing Mr. [REDACTED] to come and go as he pleases and remain in the home without providing this information to the OCC, a program requirement. Further, she failed to report domestic violence charges that arose from an assault committed by Mr. [REDACTED] in the Appellant's child care home against an individual approved as a care substitute. The Appellant has placed her concern for her son before her responsibilities to the children in her care. I am not persuaded that the Appellant will follow the procedures to ensure the safety of the children in her home. Accordingly, I find the emergency suspension to be appropriate while the OCC completes its investigation.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the OCC properly suspended the Appellant's family child care certificate of registration on an emergency basis, effective March 14, 2019, and that the emergency suspension shall remain in effect for no more than forty-five days from that date. Md. Code Ann., Educ. § 9.5-102(b)(2) (2018); Md. Code Ann., State Gov't § 10-226(c)(2) (2014); COMAR 13A.15.13.06.

ORDER

I ORDER that the Office of Child Care's emergency suspension of the Appellant's family child care certificate of registration is AFFIRMED for a period not to exceed forty-five days.

March 26, 2019
Date Decision Issued

Signature Appears on
Original [REDACTED]
[REDACTED]
Michelle W. Cole
Administrative Law Judge

MWC/dlm
#178932

REVIEW RIGHTS

This is the final decision of the Maryland State Department of Education. A party aggrieved by this final decision may, within thirty days of the date of this decision, file a petition for judicial review with the Circuit Court for Baltimore City, if any party resides in Baltimore City or has a principal place of business there, or with the circuit court for the county in which any party resides or has a principal place of business. Md. Code Ann., State Gov't § 10-222(c) (Supp. 2018); Md. Rules 7-201 through 7-210. A separate petition may be filed with the court to waive filing fees and costs on the ground of indigence. Md. Rule 1-325. The Office of Administrative Hearings is not a party to any review process.

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