

████████████████████

APPELLANT

v.

MARYLAND STATE DEPARTMENT

OF EDUCATION,

OFFICE OF CHILD CARE

* BEFORE TRACEE N. HACKETT,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
*
* OAH No.: MSDE-OCC-27-22-13404

* * * * *

DECISION

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STATEMENT OF THE CASE

On May 31, 2022, the Maryland State Department of Education’s (MSDE) Office of Child Care (OCC) notified the Appellant that it intended to deny the Appellant’s application for a Family Child Care certificate of registration. Code of Maryland Regulations (COMAR) 13A.15.02.07A(1), (2), (9), (10). On June 7, 2022, the Appellant requested a hearing to appeal the OCC’s decision, COMAR 13A.15.02.07E(3), and on June 9, 2022, that request was received by the Office of Administrative Hearings (OAH).

I held the requested hearing on July 6, 2022, via the Webex video conferencing platform. COMAR 28.02.01.20B(1)(b). The Appellant was self-represented. ██████████, Assistant Attorney General, represented the OCC.

The contested case provisions of the Administrative Procedure Act, the relevant procedural regulations of the OCC, and the Rules of Procedure of the OAH govern procedure in

this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 13A.15.14; and COMAR 28.02.01.

ISSUE

Did the OCC properly deny the Appellant's application for a Family Child Care certificate of registration?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits offered by the OCC:

- OCC Ex. 1 - OCC Application for Family Child Care Registration (Provider Application) filed by Appellant, signed May 12, 2022 (39 pages)
- OCC Ex. 2 - ██████████ County Child Protective Services Investigation Summary Report, (Form 181) regarding ██████████, referral date ██████████ 2015 (2 pages)
- OCC Ex. 3 - Denial letter from the OCC to the Appellant, dated May 30, 2022 (4 pages)
- OCC Ex. 4 - Denial letter from the OCC to the ██████████, dated May 4, 2022 (3 pages)
- OCC Ex. 5 - OCC Application for Family Child Care Registration (Provider Application) filed by ██████████, signed April 14, 2022 (12 pages)

I admitted the following exhibits offered by the Appellant:

- App. Ex. 1 - Circuit Court for ██████████ County, sitting as a Juvenile Court, Closure Order, Petition No. ██████████, entered ██████████, 2018 (Closure Order)
- App. Ex. 2 - Appellant's certifications and degrees including:
 - Bachelor of Science in Education, the ██████████, ██████████ (also referred to as "██████████") in ██████████ dated November 29, 2007
 - License in Early Education, the ██████████ ██████████ ██████████ (also referred to as "██████████") in ██████████, dated December 20, 2007
 - Child Development Associate (CDA) Credential in Family Child Care, CDA National Credentialing Program, Council for Professional Recognition, dated July 16, 2020

- [REDACTED], Certificate of Attendance and Participation, “45 Hours Infant and Toddler Methods and Materials – Online” course, dated August 28, 2021
- [REDACTED] College, Workforce Development and Continuing Education, Certificate of Completion for “Discipline According to Montessori” course, dated March 26, 2022
- [REDACTED] College, Workforce Development and Continuing Education, Certificate of Completion for “Montessori: Using Phonics” course, dated February 12, 2022
- [REDACTED] College, Workforce Development and Continuing Education, Certificate of Completion for “Infants and Toddlers Development from a Montessori Approach” course, dated May 14, 2022
- American Red Cross Training Services, Adult and Pediatric First Aid/ cardiopulmonary resuscitation (CPR)/automated external defibrillator (AED) Certification, dated February 27, 2021
- MSDE, Division of Early Childhood, OCC, Certification of Completion for Medication Administration Training, dated September 4, 2021
- [REDACTED], Certificate of Completion for “Understanding Each Other: Community with Families, Staff and Your Community” course, dated July 23, 2021
- [REDACTED], Certificate of Attendance and Participation for “Emergency and Disaster Preparedness-Online” course, dated September 9, 2021
- MSDE, Division of Early Childhood, OCC, Certification of Completion for “Including All Children and the Americans with Disabilities Act” course, dated August 3, 2021
- [REDACTED], Certificate of Completion for “Basic Health & Safety Training with Supporting Breastfeeding in Child Care” course, dated March 11, 2021
- MSDE, Division of Early Childhood, OCC, Certification of Completion for “Child Care and COVID-19 Training” course, dated February 10, 2021
- [REDACTED], Certificate of Completion for “Supporting Breastfeeding in Child Care” course, dated March 4, 2021
- [REDACTED], Certificate of Completion for “SIDS, SUID and Other Sleep-Related Infant Deaths” course, dated March 4, 2021
- [REDACTED]
[REDACTED] Certificate of Accomplishment in the Child Development Associate (CDA) Program, dated March 25, 2010

App. Ex. 3 - [REDACTED]’s certification and degrees including:

- [REDACTED] High School, Certificate of Achievement for Academic Improvement and Dedication to Education, dated June 8, 2018
- [REDACTED], Certificate of Completion for 45-hour Infant and Toddler Curriculum, dated March 17, 2022

- [REDACTED], Certificate of Completion for 24-hour Family Child Care Pre-Service Training – Online, dated April 14, 2022
- [REDACTED] Certificate of Completion for Emergency and Disaster Preparedness-Online, dated April 4, 2022
- [REDACTED] College, Workforce Development and Continuing Education, Certificate of Completion for “Including all Children and the ADA” course, dated February 21, 2022
- [REDACTED] College, Workforce Development and Continuing Education, Certificate of Completion for “Medication Administration Training” course, dated March 12, 2022
- [REDACTED], Certificate of Attendance and Participation, “SIDS: Saving Babies: A Change of Position, a Change in Tradition” course, dated February 21, 2022
- [REDACTED], Certificate of Attendance and Participation, “Supporting Breastfeeding Practices in Child Care” course, dated February 23, 2022
- American Red Cross Training Services, Adult and Pediatric First Aid/CPR/AED Certification, dated February 28, 2022

App. Ex. 4 - State of Maryland, Department of Public Safety and Correctional Services (DPSCS), Criminal Justice Information System – Central Repository result for the Appellant, dated November 4, 2021; and State of Maryland, Department of Public Safety and Correctional Services, Criminal Justice Information System – Central Repository result for [REDACTED], dated March 7, 2022

Testimony

The following individuals testified on behalf of the OCC: [REDACTED], M.Ed., Regional Manager, OCC.

The Appellant testified and presented the following witness: [REDACTED]
[REDACTED], the Appellant’s son.

FINDINGS OF FACT

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

1. At all times relevant to this matter, the home located at [REDACTED], [REDACTED], Maryland [REDACTED] was owned by [REDACTED],¹ the Appellant's brother.
2. On [REDACTED], 2015, the [REDACTED] [REDACTED], Child Welfare Services (local department) made an indicated finding of child sexual abuse of [REDACTED]²
3. In the local department's investigation, Mr. [REDACTED] was the alleged maltreater; however, as he was a minor at the time, the local department determined in its discretion that no maltreater would be named in its finding.³
4. Per the local department's findings, the police charged Mr. [REDACTED] criminally,⁴ he was removed from the family's home, and required to stay with his uncle, Mr. [REDACTED].
5. On April 14, 2022, Mr. [REDACTED] filed an application for a Family Child Care registration certificate for a small sized daycare to be located at [REDACTED], [REDACTED], Maryland [REDACTED] (April 14, 2022 application).
6. On the April 14, 2022 application, Mr. [REDACTED] only listed himself as living in the residence located at [REDACTED], [REDACTED] Maryland [REDACTED].

¹ It is not clear if the last letter of the name is cut off on the supporting document for the April 14, 2022 application, and Appellant's brother's last name is [REDACTED]. OCC Ex. 5, p. 8.

² For confidentiality purposes, the local department redacted the child's full name.

³ See COMAR 07.02.07.10D ("If a child, other than the parent of a victim, is the alleged maltreater, the local department may consider the following factors in determining whether to identify the child as responsible for indicated or unsubstantiated child abuse or neglect . . ."); see also COMAR 07.02.07.11D.

⁴ There is no evidence of the specific criminal charges in the record.

7. On the April 14, 2022 application, Mr. [REDACTED] answered “no” in response to Question 11, regarding whether the applicant or any other persons living in the residence have ever been reported for child or adult abuse or neglect.

8. The April 14, 2022 application listed Mr. [REDACTED], only, as the provider with no other coprovider, additional adults, or substitutes.

9. On May 4, 2022, the OCC denied the April 14, 2022 application on the basis that he did not meet the requirements of the subtitle, being a person found responsible for child abuse; and the OCC finding reasonable doubt that he could provide for the welfare of children in his care.

10. Mr. [REDACTED] did not appeal the OCC’s denial.

11. On March 7, 2022, DPSCS reported to the OCC that [REDACTED] [REDACTED] had no criminal history in Maryland.

12. On May 12, 2022, the Appellant filed an application for a Family Child Care registration certificate for a small-sized daycare to be located at [REDACTED], [REDACTED] Maryland [REDACTED] (May 12, 2022 application).

13. On her May 12, 2022 application, the Appellant checked that she was the owner of the residence.

14. On her May 12, 2022 application, the Appellant checked that she was “single” on page 1 and then handwrote “married” under the marital status on page 2.

15. On her May 12, 2022 application, the Appellant listed herself and “[REDACTED] [REDACTED]” as the only two individuals living at [REDACTED]. The Appellant did not live at that address.

16. On her May 12, 2022 application, the Appellant included [REDACTED] [REDACTED], as additional adult provider, and [REDACTED] as a substitute.

17. On her May 12, 2022 application, the Appellant only included the month and year for her son's date of birth.

18. In response to Question 11 on her May 12, 2022 application, regarding whether the applicant or any other persons living in the residence have ever been reported for child or adult abuse or neglect, the Appellant answered "no."

19. On May 12, 2022, the Appellant signed her application attesting "[t]he information I have given on this entire application form and on all other required application documents is true, correct, and complete to the best of my knowledge."

20. On May 12, 2022, Mr. [REDACTED] signed the OCC Release of Information form as part of the Appellant's application, which authorized the local department to release any files or records of child and adult abuse or neglect to the OCC.

21. On or around May 12, 2022, the OCC received a report from the local department regarding the 2015 sexual child abuse incident involving Mr. [REDACTED].⁵

22. On May 31, 2022, the OCC denied the Appellant's May 12, 2022 application.

DISCUSSION

Burden of Proof

When not otherwise provided by statute or regulation, the standard of proof in a contested case hearing before the OAH is a preponderance of the evidence, and the burden of proof rests on the party making an assertion or a claim. State Gov't § 10-217; COMAR 28.02.01.21K. To prove an assertion or a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002). The Appellant bears the burden to show, by a

⁵ "If it furthers a purpose of the specific exception to confidentiality, a local department may disclose, at its discretion, a record or report, or information in a record or report, concerning a CPS response to [t]he Office of Child Care." COMAR 07.02.07.21D(8).

preponderance of the evidence, that she is entitled to a certificate of registration. COMAR 28.02.01.21K(1)-(2)(a).

Legal Framework

The Maryland General Assembly has declared that minor children are incapable of protecting themselves, and when parents relinquish the care of their minor children to others certain potential risks “require compensating measures.” Md. Code Ann., Educ.

§ 9.5-102(a) (2018).⁶ Consequently:

It is the policy of the State:

(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)(1)-(3).

In furtherance of those policies, the OCC registers and regulates Family Child Care homes to ensure that they meet minimum standards designed to protect children and help assure that they will be cared for in quality programs. Educ. §§ 9.5-301 through 9.5-313; COMAR 13A.15.01-13A.15.15. All homes and other facilities that regularly care for non-relatives must apply for a certificate of registration and show that they meet those standards. COMAR 13A.15.02.01-.02.

Specifically:

A. The office may deny a certificate of registration if:

(1) The applicant, a resident, any substitute, or the home in which child care is to be provided fails to meet the requirements of this subtitle;

⁶ Unless otherwise noted, all references hereinafter to the Education Article cite the 2018 Replacement Volume of the Maryland Annotated Code.

(2) An evaluation of the application or documents required by the office reveals that the applicant reported false information;

...

(9) An evaluation of the information provided in records of abuse and neglect of children and adults reveals that the applicant, a coprovider, an additional adult, a substitute, a volunteer, or a resident is identified as responsible for abuse or neglect of children or adults, or is currently under investigation for alleged acts of abuse or neglect of children or adults;

(10) Based on an interview with the applicant or an evaluation of other pertinent information, the office finds evidence that raises reasonable doubt that the applicant can provide for the welfare of children in care; or

...

COMAR 13A.15.02.07A(1), (2), (9), (10). When reviewing a denial, I am required to consider the complete record before me and determine whether the OCC correctly applied the State regulations in effect when it acted. COMAR 13A.15.14.08A. That record includes the testimony presented at the hearing in this case as well as the exhibits admitted into evidence.

The Parties' Positions

The OCC argued that it properly denied the Appellant's application. The Appellant's son, who would also be a provider, has a child sexual abuse finding. Based upon its own regulations and its obligations to protect children in Maryland licensed daycares, the OCC argued that it cannot issue this license to a home where the Appellant's son resides regardless of the outcome of the underlying criminal matter or his age at the time of the offense. Further, it was the OCC's position that the Appellant was dishonest on her application as she reapplied shortly after her son's application was denied for the same address and because she testified at the hearing that she was not living at the address on the application full-time. The OCC requested that I uphold its denial decision.

The Appellant argued that she has worked in childcare since she was 18 years old and is highly qualified to run a daycare given her certifications and degrees in this field, which she

earned in [REDACTED] and in the United States. She further argued that this license would enable her to have her own business apart from the daycare owned by her husband. The Appellant argued that the OCC should approve her application because from what she understood the charges related to the child sexual abuse against her son had been dismissed by the Court. The Appellant further argued that her family has worked hard to overcome this incident involving her son and her daughter, that her son complied with all terms set by the Court for the dismissal, and that the affected family members have attended counseling. She argued that she intends to live at the address on the application in a few months, which was her brother's home that her brother gave to her son, and where she has been helping to pay the mortgage. The Appellant requested that I reverse the OCC's denial so that she can earn a living and contribute to supporting her family.

Analysis

For the following reasons, I conclude that the regulatory standard for denial has been met in this case. I will address the four reasons for the OCC's denial under COMAR 13A.15.02.07A(1), (2), (9), (10), by the following order: the child abuse findings; the false statement; welfare of the children in care; and failure to meet the requirements.

In this particular instance, the Appellant believed that based upon the Court's Closure Order that the entirety of the case had been resolved. The copy of the Court's Closure Order (App. Ex. 1), which the Appellant testified relates to the underlying criminal charges arising from the same sexual abuse incident as the CPS charges, indicates the closure of the criminal case and corroborates her testimony. Additionally, the CPS findings (OCC Ex. 2) and both denial letters (OCC Exs. 3, 4) acknowledge that Mr. [REDACTED] is not listed as the identified maltreater due to his age at the time of the child sexual abuse incident. A "[m]altreater" means an individual whom a local department has found responsible for indicated or unsubstantiated child abuse or neglect." COMAR 07.02.07.02B(34). The OCC may deny an

application if the applicant or coprovider “is identified as responsible for abuse or neglect of children or adults.” COMAR 13A.15.02.07A(9). Since the local department did not identify Mr. [REDACTED] as a maltreater in its indicated findings, he is not by law, identified as a person responsible. *See also* Md. Code Ann., Fam. Law § 5-714(d)(2) (2019); COMAR 07.02.26.02B(15). Notably and accurately, Mr. [REDACTED]’s April 14, 2022 application was not denied for this reason. *See* OCC Ex. 4. Therefore, the Appellant’s license application could not be denied on this basis. COMAR 13A.15.02.07A(9).

The more dispositive issue is whether the Appellant provided a false statement about this information on her application. The question posed on the application does not ask about the outcome of the child abuse and neglect investigation. Instead, applicants are asked to answer “yes” or “no” to whether the applicant or any other persons living in the residence have ever been *reported* for child or adult abuse or neglect. OCC Ex. 1, p. 3; OCC Ex. 5, p. 3. (emphasis added). The OCC presented the form 181 from the local department which indicated a referral date of June 1, 2015 where Mr. [REDACTED] was listed as the “alleged maltreater” (OCC Ex. 2, p. 1). Therefore, it is clear that at the time of the Appellant’s May 12, 2022 application, Mr. [REDACTED] was a person *reported* for child abuse.

The Appellant testified that she intended to tell the truth when completing the application. Further, she testified that she did not have any assistance when completing this application, and that she submitted both applications using a model application.⁷ The Appellant testified that she believed that the answer was “no” to Question 11, given the Court’s Closure Order and that her son was a minor at the time. The Appellant testified that her son is willing to move out of the residence if that would result in reconsideration and approval of the daycare license. She testified that her daughter does not remember this incident, and that she gets along well with her

⁷ In closing arguments, the Appellant acknowledged “making a mistake by lying” on the application but clarified that she “did not do it on purpose.” As closing argument is not considered evidence, I did not consider this additional statement in my analysis.

son as well as her other six-year-old son. The Appellant emphasized that her family has worked hard to overcome this incident, including attending counseling.

In order to determine whether the Appellant made a false statement on the application, I must determine her intent when she answered the questions on the May 12, 2022 application. Maryland courts have consistently required an element of intent with dishonesty, fraud, and misrepresentation in civil causes of action and an element of mental state in the criminal context.⁸

In terms of dishonesty, the mental state of the actor is one of the five required elements:

To assert a claim for deceit,⁹ which is equivalent to fraud, a plaintiff must allege the following elements: (1) that the defendant made a false representation to the plaintiff, (2) **that its falsity was either known to the defendant or that the representation was made with reckless indifference as to its truth**, (3) **that the misrepresentation was made for the purpose of defrauding the plaintiff**, (4) that the plaintiff relied on the misrepresentation and had the right to rely on it, and (5) that the plaintiff suffered compensable injury resulting from the misrepresentation.

Nails v. S & R, Inc., 334 Md. 398, 415 (1994) (bold added, citations omitted).

A claim for fraud also requires a specific intent. “Maryland courts have emphasized that fraud exists only when the speaker had (i) intent to defraud, and (ii) knowledge that his statement was false at the time it was made.” *Froelich v. Erickson*, 96 F. Supp. 2d 507, 522 (D. Md. 2000). “Fraud in the popular understanding of the term involves an element of moral turpitude or bad faith. It is never presumed, but must be clearly proved.” *Kuhn v. Chesapeake & Ohio Ry. Co.*,

⁸ For examples, *see* Md. Ann. Code, Crim. Law, § 1-401 (2021) or Md. Ann. Code, Crim. Law, Title 8. Fraud and Related Crimes (2021).

⁹ Dishonesty is defined as “deceitfulness as a character trait; behavior that deceives or cheats people; untruthfulness; untrustworthiness.” Black’s Law Dictionary (11th ed. 2019).

118 F.2d 400, 405 (4th Cir. 1941).¹⁰ Likewise, misrepresentation¹¹ has the same intent requirement.

To be actionable, a false representation “must be of a material fact.” “A ‘material’ fact is one on which a reasonable person would rely in making a decision,” or a fact that “the maker of the misrepresentation knows ... [the] recipient is likely to regard ... as important.” Moreover, the “misrepresentation must be made with the deliberate intent to deceive.”

Ademiluyi v. PennyMac Mortg. Inv. Tr. Holdings I, LLC, 929 F. Supp. 2d 502, 530–32 (D. Md. 2013) (internal citations omitted).

I can appreciate how the Appellant would have been confused about the outcome of the two proceedings or the differences between them. These intertwined but separate legal processes are sometimes confusing for laypersons. Coupled with the Appellant’s first language being ██████████, I understand how she may not have realized that the question asked for reported allegations/charges versus a finding of child sexual abuse against her son. Further, in response to my questions, the Appellant recalled having a hearing at the local department, which was separate from the Court proceeding, but also clarified that no one explained the differences between the two proceedings. In insolation, I would believe the Appellant’s testimony during direct examination. However, I cannot ignore the other facts in this case.

First, the I considered the Appellant’s testimony during cross-examination. When asked if she understood why Mr. ██████████’s application was denied, the Appellant testified that it was because he was charged with sexual abuse as a minor, but she did not appreciate the repercussions of the sexual child abuse incident since her son was not listed as the offender.

¹⁰ See also *First Union Nat’l Bank v. Steele Software Sys. Corp.*, 154 Md. App. 97, 147 (2003), “A cause of action for fraud, however, has a strict requirement of scienter. ‘[R]ecovery in a tort action for fraud or deceit in Maryland is based upon a defendant’s deliberate intent to deceive.’ *Wrexham*, 350 Md. at 704 (quoting *Ellerin v. Fairfax Sav.*, 337 Md. 216, 230 (1995)). See also *Miller v. Fairchild Indus., Inc.*, 97 Md. App. 324, 342, cert. denied, 333 Md. 172 (1993) (“Proof of scienter is critical to a successful deceit action”).”

¹¹ Misrepresentation is defined as “the act or an instance of making a false or misleading assertion about something, usu. with the intent to deceive. The word denotes not just written or spoken words but also any other conduct that amounts to a false assertion.” Black’s Law Dictionary (11th ed. 2019).

When asked why she answered “no” to Question 11, the Appellant testified that she only thought that the question applied to her, and the other people in her household (meaning her other address) and did not think it applied to her son since he was a minor. She also clarified that when her son’s application was denied, she discussed it with her husband, and they decided that she would have her own daycare business instead of appealing her son’s denial. Based upon her responses, it is clear that the Appellant understood why her son’s application was denied at the time she submitted her application for the same location.

Second, the timing of the Appellant’s application—the Appellant submitted her application only eight days after her son’s application was denied. Mr. [REDACTED]’s April 14, 2022 application did not even list the Appellant’s name as a resident [REDACTED], a coprovider, a substitute or even as another adult. The Appellant’s name does not appear anywhere on the April 14, 2022 application. Yet, on her May 12, 2022 application, the Appellant has listed herself as a homeowner and resident of [REDACTED].

Third, the inaccuracies on the May 12, 2022 application -- the Appellant listed her residence as the [REDACTED] address, did not provide the full date of birth for her son, marked that she was single, then wrote that she was married, and also listed herself as the homeowner at the [REDACTED] address. The date of birth and marital status may have been careless mistakes, but the other sections were intentionally answered so that the Appellant could obtain approval. On cross examination, the Appellant testified that she intends to live at the [REDACTED] address in a couple of months, but currently only stays overnight occasionally where she also cooks and cleans. She clarified that she resides at [REDACTED] in [REDACTED] County, Maryland. The application has a space for “applicant’s residence.” Although it is plausible that the Appellant may not have understood all components of the application, I do not believe that she did not understand what was meant for the address section. She simply does not live at the

██████████, Maryland address. She also listed herself as the homeowner on her May 12, 2022 application, which is not accurate. Although she may pay the mortgage so that her son may reside in the brother's home, according to the information submitted with the April 14, 2022 application, Mr. ██████████ is still the owner (OCC Ex. 5).

Based upon the totality of these facts, I do not find the Appellant's explanation for how she answered Question 11 to be credible. The Appellant intentionally misrepresented that she lived at the address on the application and was the homeowner, with the desired outcome of gaining approval for a small daycare when she knew why her son's application was denied. I find that the Appellant understood why her son was denied, i.e., for having the sexual child abuse "charge" at the time that she submitted her own application; therefore, it is inconsistent for her to claim that she did not think that Question 11 applied to him. I further find that Appellant made this false statement with the intention that the OCC would approve the application if Mr. ██████████ ██████████ was not listed as the main provider when she resubmitted the same application for his address in her own name. Therefore, the OCC's reason to deny the daycare registration license for providing a false statement on the application was proper. COMAR 13A.15.02.07A(2).

For these same reasons, I agree with Ms. ██████████'s testimony that she has reasonable doubts that the Appellant can account for the welfare and safety of children in her care given the child sexual abuse incident. COMAR 13A.15.02.07A(10). Ms. ██████████, Regional Manager, OCC, testified that the OCC has concerns about the Appellant's dishonesty regarding her son's history and about her own residency coupled with the circumstances of the child sexual abuse. Additionally, Ms. ██████████ testified that daycare inspections are only conducted a few times a year, so there is no guarantee that the Appellant would not have her son in the daycare home even if he moved out. Ms. ██████████ emphasized the obligation to protect small children attending a daycare, and how approving the Appellant's license would be contrary to the OCC's obligation. Ms.

██████ has over 30 years of experience in childcare and licensing, including 20 years overseeing licensed childcare facilities; and previously serving as an accredited licensed childcare director; therefore, I found her testimony to be credible.

Even though Mr. ██████████ was not identified as the maltreater and was a minor, the OCC submitted evidence from the local department's findings that the incident involved another family member who was four years old, that the sexual abuse incident involved ██████████ ██████████ of the child, and physical molestation of the child's ██████████ area. Based upon the Court's Closure Order, I am certain that Mr. ██████████ adhered to the conditions necessary for the dismissal and that the family members participated in counseling according to the Appellant. The Appellant also testified that her son has not had any issues since this time and has been a law-abiding citizen, where he has been working in ██████████. However, the requirements for OCC to obtain information about child abuse and neglect records, as part of the application process, serves "to protect minor children whose care has been relinquished to others by the child's parent." Md. Code Ann., Educ. § 9.5-102(b)(1). The risk of exposing other minor children to this type of sexual behavior, which only occurred seven years ago, is not outweighed by the Appellant's qualifications to run a daycare. I found the multitude of the Appellant's certifications, licenses, and degrees in early childhood education to be impressive, and I sympathize with her predicament that she cannot utilize them at a daycare of her own, but the law simply does permit a license to be issued in these circumstances. Since the Appellant cannot comply with the requirements of the subsection for the reasons state above, her application was properly denied by the OCC for that reason as well. COMAR 13A.15.02.07A(1).

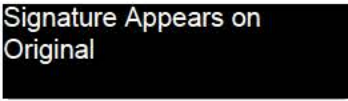
CONCLUSION OF LAW

Based on the above Findings of Fact and Discussion, I conclude that the OCC properly denied the Appellant’s application for a Family Child Care certificate of registration. Md. Code Ann., Educ. § 9.5-102 (2018); COMAR 13A.15.14.08A; COMAR 13A.15.02.07A(1), (2), (10).

ORDER

I **ORDER** that the Office of Child Care’s denial of the Appellant’s application for a Family Child Care certificate of registration is **AFFIRMED**.

August 31, 2022
Date Decision Mailed

Signature Appears on
Original

Tracee N. Hackett
Administrative Law Judge

TNH/at
#200296

REVIEW RIGHTS

This is the final decision of the Maryland State Department of Education. A party aggrieved by this decision may, within thirty (30) days of the date of the 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) (2021); 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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[REDACTED] [REDACTED] [REDACTED]
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[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

████████████████████,

APPELLANT

v.

MARYLAND STATE DEPARTMENT

OF EDUCATION,

OFFICE OF CHILD CARE

* BEFORE TRACEE N. HACKETT,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
*
* OAH No.: MSDE-OCC-27-22-13404

* * * * *

FILE EXHIBIT LIST

I admitted the following exhibits offered by the OCC:

- OCC Ex. 1 - OCC Application for Family Child Care Registration (Provider Application) filed by Appellant, signed May 12, 2022 (39 pages)
- OCC Ex. 2 - ██████████ County Child Protective Services Investigation Summary Report, (Form 181) regarding ██████████, referral date ██████████ 2015 (2 pages)
- OCC Ex. 3 - Denial letter from the OCC to the Appellant, dated May 30, 2022 (4 pages)
- OCC Ex. 4 - Denial letter from the OCC to the ██████████, dated May 4, 2022 (3 pages)
- OCC Ex. 5 - OCC Application for Family Child Care Registration (Provider Application) filed by ██████████, signed April 14, 2022 (12 pages)

I admitted the following exhibits offered by the Appellant:

- App. Ex. 1 - Circuit Court for ██████████ County, sitting as a Juvenile Court, Closure Order, Petition No. ██████████, entered ██████████, 2018 (Closure Order)
- App. Ex. 2 - Appellant’s certifications and degrees including:
 - Bachelor of Science in Education, the ██████████, ██████████ (also referred to as “██████████”) in ██████████, dated November 29, 2007
 - License in Early Education, the ██████████, ██████████ (also referred to as “██████████”) in ██████████, dated December 20, 2007
 - Child Development Associate (CDA) Credential in Family Child Care, CDA National Credentialing Program, Council for Professional Recognition, dated July 16, 2020

- [REDACTED], Certificate of Attendance and Participation, “45 Hours Infant and Toddler Methods and Materials – Online” course, dated August 28, 2021
- [REDACTED] College, Workforce Development and Continuing Education, Certificate of Completion for “Discipline According to Montessori” course, dated March 26, 2022
- [REDACTED] College, Workforce Development and Continuing Education, Certificate of Completion for “Montessori: Using Phonics” course, dated February 12, 2022
- [REDACTED] College, Workforce Development and Continuing Education, Certificate of Completion for “Infants and Toddlers Development from a Montessori Approach” course, dated May 14, 2022
- American Red Cross Training Services, Adult and Pediatric First Aid/ cardiopulmonary resuscitation (CPR)/automated external defibrillator (AED) Certification, dated February 27, 2021
- MSDE, Division of Early Childhood, OCC, Certification of Completion for Medication Administration Training, dated September 4, 2021
- [REDACTED], Certificate of Completion for “Understanding Each Other: Community with Families, Staff and Your Community” course, dated July 23, 2021
- [REDACTED], Certificate of Attendance and Participation for “Emergency and Disaster Preparedness-Online” course, dated September 9, 2021
- MSDE, Division of Early Childhood, OCC, Certification of Completion for “Including All Children and the Americans with Disabilities Act” course, dated August 3, 2021
- [REDACTED], Certificate of Completion for “Basic Health & Safety Training with Supporting Breastfeeding in Child Care” course, dated March 11, 2021
- MSDE, Division of Early Childhood, OCC, Certification of Completion for “Child Care and COVID-19 Training” course, dated February 10, 2021
- [REDACTED], Certificate of Completion for “Supporting Breastfeeding in Child Care” course, dated March 4, 2021
- [REDACTED], Certificate of Completion for “SIDS, SUID and Other Sleep-Related Infant Deaths” course, dated March 4, 2021
- [REDACTED]
[REDACTED] Certificate of Accomplishment in the Child Development Associate (CDA) Program, dated March 25, 2010

App. Ex. 3 - [REDACTED]’s certification and degrees including:

- [REDACTED] High School, Certificate of Achievement for Academic Improvement and Dedication to Education, dated June 8, 2018
- [REDACTED] Certificate of Completion for 45-hour Infant and Toddler Curriculum, dated March 17, 2022

- [REDACTED] Certificate of Completion for 24-hour Family Child Care Pre-Service Training – Online, dated April 14, 2022
- [REDACTED], Certificate of Completion for Emergency and Disaster Preparedness-Online, dated April 4, 2022
- [REDACTED] College, Workforce Development and Continuing Education, Certificate of Completion for “Including all Children and the ADA” course, dated February 21, 2022
- [REDACTED] College, Workforce Development and Continuing Education, Certificate of Completion for “Medication Administration Training” course, dated March 12, 2022
- [REDACTED], Certificate of Attendance and Participation, “SIDS: Saving Babies: A Change of Position, a Change in Tradition” course, dated February 21, 2022
- [REDACTED], Certificate of Attendance and Participation, “Supporting Breastfeeding Practices in Child Care” course, dated February 23, 2022
- American Red Cross Training Services, Adult and Pediatric First Aid/CPR/AED Certification, dated February 28, 2022

App. Ex. 4 - State of Maryland, Department of Public Safety and Correctional Services (DPSCS), Criminal Justice Information System – Central Repository result for the Appellant, dated November 4, 2021; and State of Maryland, Department of Public Safety and Correctional Services, Criminal Justice Information System – Central Repository result for [REDACTED], dated March 7, 2022