

Exs. P-1 through P-7.)

2.

On Friday, August 9, 2013, Petitioner was caring for seven children under the age of three at her home. She did not have an assistant. Bright from the Start rules allow a single individual to care for up to six children under the age of three in a FDCH. An additional adult is required to provide care for more than six children under the age of three, because children within that age range frequently need more supervision and attention. (Testimony of Ms. Wilson.)

3.

At approximately 7:30 a.m. on August 9, 2013, Sealie McDonald, a three-month-old infant, was left in Petitioner's care by his father. His father told Petitioner that Sealie was congested and that his nose has been suctioned multiple times that morning with a bulb syringe to remove mucus. He provided her with a bulb syringe. Petitioner noted that when she attempted to feed him, his nasal congestion was making it difficult for him to both suck on the bottle and breathe at the same time. In fact, he was only able to drink approximately one ounce of the six ounces of fluid in the bottle. (Testimony of Petitioner; Testimony of Ms. Wilson.)

4.

In the morning, in addition to feeding him a bottle, Petitioner rocked him, put him in a bouncy chair and a swing, and let him play on an activity mat. When he started becoming fussy and rubbing his eyes, she put him down for a nap in a Pack 'n Play, located in the master bedroom of the house. The other six children took naps in a different room. (Testimony of Petitioner.)

5.

It was approximately 9:12 a.m. when Petitioner laid Sealie down for his nap in the Pack

'n Play. She placed him down on his side, facing the wall. This is contrary to Bright from the Start rules, which require infants to be placed on their backs. This rule is based on the safety recommendation of the American Academy of Pediatrics. (Testimony of Ms. Wilson.)

6.

Petitioner went into the master bedroom and visually observed Sealie at least three times that morning; at approximately 9:40 a.m., 10:15 a.m., and shortly before 11:00 a.m. On none of these occasions did she pick him up or touch him. At some point, she noticed that he had turned himself onto his stomach, but she did not reposition him. Under Bright from the Start rules, a caretaker should reposition an infant onto his or her back, unless the child has begun turning over regularly and with ease. The age at which children can reposition themselves varies, but the younger the child the more difficulty the child is likely to have. No evidence was presented on whether Sealie was able to easily reposition himself. (Testimony of Petitioner; Testimony of Ms. Wilson.)

7.

Shortly before noon, Petitioner went to wake Sealie so his mother could take him to the doctor. When she picked him up, his lips were blue and he was limp and unresponsive. She performed CPR and called 9-1-1. Sealie was taken to the hospital, where he was pronounced dead. (Testimony of Ms. Wilson.)

8.

The Department began investigating Sealie's death on Monday, August 12, 2013. The Order for Intended Emergency Closure was issued on August 19, 2013. The Department delayed in reaching a decision because it initially believed that Petitioner was going to voluntarily close her day care. Petitioner appealed the decision to OSAH on August 20, 2013. (Testimony of Shenetta McNair, Bright from the Start, Complaint Unit; Testimony of Ms. Wilson; Petitioner's

request for a hearing.)

9.

The coroner's office has not yet released its final report on the cause of death. The Department is awaiting the results in order to determine whether there is any imminent danger to the other children. Petitioner admits that she was in violation of Bright from the Start Rules and regrets that she did not physically touch Sealie during his nap. She has been forthright and cooperative with the Department in its investigation. (Testimony of Ms. Wilson; Testimony of Petitioner.)

II. CONCLUSIONS OF LAW

1.

The Department bears the burden of proof in this matter. Ga. Comp. R. & Regs. 616-1-2-.07. The standard of proof is a preponderance of evidence. Ga. Comp. R. & Regs. 616-1-2-.21.

2.

The Commissioner of the Department of Early Care and Learning is authorized to issue an emergency closure order of an early care and education program for up to twenty-one days under the following circumstances:

- (A) Upon the death of a minor at such program, unless such death was medically anticipated or no serious rule violations related to the death by the program were determined by the department; or
- (B) Where a child's safety or welfare is in imminent danger.

O.C.G.A. §§ 20-1A-2 (definitions of "Commissioner" and "Department"), 20-1A-13(c)(1).¹

Where the danger is not imminent and no death has occurred at the facility, the Commissioner may instead place monitors at the program if he or she finds that the program has violated

¹ Prior to July 2011, and the passage of Senate Bill 185, the Commissioner's authority in the event of an immediate threat to the health, safety or welfare of a child at an early child care and education program was restricted to placing a monitor at the program to observe the conditions for up to twenty days. See O.C.G.A. § 20-1A-13(b); S.B. 185, 151st Gen. Assemb., Reg. Sess. (Ga. 2011).

Department rules, thereby endangering “the health, safety, or welfare of the children in the care of the program” and the “[c]hildren are suspected of being subjected to injury or life-threatening situations” O.C.G.A. § 20-1A-13(b)(1)(C).

3.

The Department of Human Resources has promulgated regulations for FDCHs, located at Chapter 290-2-3 of the Georgia Rules and Regulations. The rules define a “Family Day Care Home” as “a private residence operated by any person who receives therein for pay for supervision and care . . . [of] three but not more than six children under 18 years of age who are not related to such persons and whose parents or guardians are not residents in the same private residence.” Ga. Comp. R. & Regs. 290-2-3-.03(h) (emphasis added). The rules further provide that “an employee who must be at least 16 years of age must be present to assist with supervision whenever . . . more than six children under the age of three years are present.” Ga. Comp. R. & Regs. 290-2-3-.07(8)(a)2.

4.

Here, Petitioner was caring for seven children under the age of three at her FDCH, without any assistance. This is a violation of Rule 290-2-3-.07(8)(a)2.

5.

The rules also require a FDCH staff member to “put an infant to sleep on the infant’s back. . . . [however] [w]hen an infant can easily turn over onto his or her stomach, staff shall continue to put the infant to sleep initially on the infant’s back but allow the infant to roll over onto his or her stomach as the infant prefers.” Ga. Comp. R. & Regs. 290-2-3-.19. The purpose of the rule is to “reduce the risk of Sudden Infant Death Syndrome (SIDS).” *Id.*

6.

Here, Petitioner admitted to placing Sealie on his side to sleep and acknowledged that

this was a violation of the rules. Because he was facing the wall, she would not have been able to view his face easily and observe him breathing. She also did not touch him or pick him up at any time between 9:12 a.m. and shortly before noon, even when she saw him sleeping on his stomach, despite knowing that he was congested.

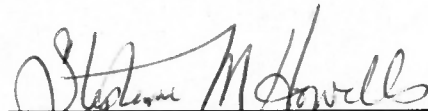
7.

The Department proved by a preponderance of the evidence that a child died while in Petitioner's care. The death was not medically anticipated, and there were rule violations sufficiently related to the child's death. Because the cause of death has yet to be determined and/or released by the coroner's office, it is unclear whether the continued operation of Petitioner's FDCH would pose an imminent danger to the safety or welfare of the other children in her care. The Department needs the twenty-one days of emergency closure to conclude its investigation and determine whether Petitioner's facility can safely reopen. Accordingly, for the foregoing reasons, the undersigned concludes that the emergency closure of Petitioner's FDCH for up to twenty-one days is warranted.² O.C.G.A. § 20-1A-13(c)(1)(A).

IV. DECISION

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Order for Intended Emergency Closure is hereby **AFFIRMED**.

SO ORDERED, this 23rd day of August, 2013.



STEPHANIE M. HOWELLS
Administrative Law Judge

² The Court also notes that Petitioner was extremely remorseful and forthright during the hearing. It is obvious that she deeply cares for the children in her day care.