

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

: Petitioner, : Docket No.:
: : Schroer
v. :
: :
DEPARTMENT OF HUMAN SERVICES, :
: :
Respondent. :
: :



FILED
OSAH

AUG 15 2013

K. Westray

Kevin Westray, Legal Assistant

INITIAL DECISION

I. Introduction

This matter is the administrative review of the decision of the Office of Residential Child Care ("ORCC") that Petitioner's alleged criminal record precludes Petitioner from being approved as a foster parent. Respondent's decision is hereby **AFFIRMED**.

II. Findings of Fact

The Judge has considered the entire evidence in this case, and based upon a preponderance of the evidence make the following findings of fact.

1.

Petitioner has applied to be a foster parent through Benchmark Family Services, a child placing agency.

2.

In conjunction with her application, Petitioner furnished to Respondent a preliminary criminal records check application. Subsequently, Respondent notified Petitioner in writing that Petitioner's criminal records check was unsatisfactory.

3.

Petitioner's criminal convictions consist of the following: In 2011, Petitioner was charged with several felony charges relating to insurance fraud and making false statements. In or around December 2012, Petitioner pled guilty to four counts of insurance fraud, three counts of making a false statement, and one count of making a false report of a crime. She received First Offender Status, was ordered to pay a fine of \$2500.00, and will be on probation for approximately fifteen years.¹ These charges arose out of Petitioner's reporting a break-in at her house in Peachtree City in

¹ Petitioner was subject to intensive probation for approximately three months, beginning in January 2013, during which time she was permitted to leave her house from 7:00 a.m. to 7:00 p.m.

or around August 2010.² Petitioner testified at the administrative hearing that she accepted the plea agreement to avoid further trauma to her family and a possible lengthy prison sentence. Notwithstanding her plea, both Petitioner and her son deny that Petitioner filed a false insurance claim or that Petitioner was involved in any way with the break-in. (Testimony of Petitioner,

4.

Petitioner is not currently employed. However, she is planning on enrolling in dialysis classes in September. In the past, Petitioner has worked with the Head Start after-school program, as a visiting nurse, and in the mortgage industry. From 2009 to 2011, Petitioner worked as a private duty nurse through the [redacted], and was a foster parent for a special needs teenager from July 2011 to October 2012.³

5.

Having examined the circumstances of the case as disclosed at the hearing, the Court finds that no physical harm was done to a victim. However, Petitioner is currently unemployed and the record does not reflect steady employment since her recent conviction in December 2012. In addition, Petitioner did not adequately prove, through credible, unbiased evidence, that notwithstanding her guilty pleas, she did not commit fraudulent acts involving moral turpitude. Based on these factors, although there is no propensity for cruel behavior, Petitioner presented insufficient evidence to show that there is no propensity for behavior involving moral turpitude.

only and was ordered to perform community service. She has successfully completed these requirements and the current terms of her probation are (i) make payments of \$100.00 per month toward her fines and fees and (ii) call her probation officer once a month. (Testimony of Petitioner)

² Petitioner testified that the house was a large, nine-bedroom home on four acres, which had been in foreclosure through Wells Fargo Bank. Petitioner was not living in the house at the time of the alleged break-in, but she periodically visited the house to check on it and get her mail. On one visit in August 2010, she discovered the house turned upside down and items missing. Petitioner called the police. Petitioner testified that she learned from an officer that her neighbors recently had made reports of suspicious men at the home on two prior occasions. According to Petitioner, on one occasion the men had a work order from Wells Fargo. On the second occasion, Petitioner testified that the men were removing televisions and other items and they told the police that they were friends of the Wilsons. After discovering the alleged break-in, Petitioner made a claim with her insurance company, including a list of stolen items. According to the charges, some of the items on the list were later found in Petitioner's home. Petitioner disputes this allegation. Moreover, although Petitioner maintains that the incident was a break-in, she also testified that the men who took the missing items may have worked with a mortgage contracting services company. (Testimony of Petitioner, [redacted])

³ Petitioner did not disclose the criminal charges or her plea to the foster care agency, Neighbor to Family, which placed the foster child with her.

III. Conclusions of Law

Based upon the findings of fact, the Judge makes the following conclusions of law.

1.

Respondent has the burdens of persuasion and going forward in this matter. OSAH Rule 616-1-2-.07. However, with respect to Petitioner's motion for an exception to sanctions normally imposed, Petitioner shall bear the burden. O.C.G.A. § 49-5-73. The standard of proof on all issues is a preponderance of the evidence presented. OSAH Rule 616-1-2-.21(4).

2.

Under Georgia law, all potential foster parents are required to submit to a criminal records check. O.C.G.A. § 49-5-69.1(a). See O.C.G.A. §§ 49-5-60(1), 49-5-12(a); Ga. Comp. R. & Regs. r. 290-9-2-.04(5).

3.

A potential foster parent with a criminal record based on a felony or other enumerated offense may not be hired unless the criminal record is deemed satisfactory by the Respondent or an Administrative Law Judge. O.C.G.A. §§ 49-5-60(3)-(4), 49-5-69(a); 49-5-73; Ga. Comp. R. & Regs. r. 290-9-2-.04(6).

4.

Upon motion by any party, the Administrative Law Judge may, in his or her discretion, consider matters in mitigation of any conviction provided that no physical harm was done to a victim and that there is no propensity for cruel behavior or behavior involving moral turpitude on the part of Petitioner. O.C.G.A. § 49-5-73.


5.

Having considered matters in mitigation under Finding of Fact No. 5 above, the undersigned concludes that given the very short period of time since Petitioner's conviction, the length of her probation, her lack of employment since the conviction, and the seriousness of the charges to which she pled guilty, Petitioner has failed to prove sufficient mitigation to justify an exception to the sanctions normally imposed for an unsatisfactory criminal record.

IV. Decision

Petitioner's motion to be allowed to become a foster care parent as an exception to the sanctions normally imposed under the circumstances described above is hereby **DENIED**. Respondent's action prohibiting such employment is **AFFIRMED**.

SO ORDERED, this the 15th day of August, 2013.


KIMBERLY W. SCHROER
ADMINISTRATIVE LAW JUDGE