

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

DIANNE APPLEBY,	:	
Petitioner,	:	Docket No.: OSAH-DECAL-FDCH-
	:	1411999-29-Walker
v.	:	
	:	
BRIGHT FROM THE START, GEORGIA	:	
DEPARTMENT OF EARLY CARE AND	:	
LEARNING,	:	
Respondent.	:	

**FINAL DECISION
ORDER AFFIRMING EMERGENCY CLOSURE**

This matter is an appeal by Petitioner, Dianne Appleby, of the Order for Intended Emergency Closure of her licensed Family Day Care Home issued by the Commissioner for the Georgia Department of Early Care and Learning (hereinafter “Department”) on September 27, 2013. Petitioner requested a preliminary hearing, pursuant to O.C.G.A. § 20-1A-13. The preliminary hearing was held on October 2, 2013, before the undersigned Administrative Law Judge of the Office of State Administrative Hearings. Petitioner appeared and represented herself. The Department was represented by Clare Michaud, Esq. For the reasons stated below, the Order for Intended Emergency Closure is hereby **AFFIRMED**.

FINDINGS OF FACT

1.

The Department of Human Resources has promulgated Rules and Regulations for Family Day Care Homes (hereinafter “FDCH” or “facility”). Under the Rules and Regulations, a FDCH is defined 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 13 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. r. 290-2-3-.03(h).

2.

Petitioner Dianne Appleby operated a FDCH located at 405 Somerset Drive, Athens, Georgia, 30606. (Testimony of Ashley Shirah)

3.

Ashley Shirah is a child care consultant employed by the Department. She conducts licensing inspections and monitoring visits to licensed child care facilities throughout the State of Georgia. On September 25, 2013, Ms. Shirah, accompanied by another Department employee, conducted an annual licensing inspection of Petitioner's facility. Ms. Shirah arrived at the facility at approximately 12:10 p.m. As she approached the facility, she noticed the odor of marijuana; however, she was unable to determine if the odor was coming from the facility. (Testimony of Shirah)

4.

Ms. Shirah entered the FDCH and began to conduct the inspection. She noted that Petitioner was caring for a total of nine children who were not related to her, three infants asleep in the living room and six other children who were napping in the playroom. All nine of these children were aged three or younger, and Petitioner was receiving compensation for seven out of nine of these children. (Testimony of Shirah)

5.

Ms. Appleby's husband, Sandy Appleby, was at home in the basement. During the inspection, Mr. Appleby opened the basement door and walked into the living room. Ms. Shirah immediately noticed that the odor of marijuana intensified when Mr. Appleby entered the living room. Ms. Shirah and her fellow employee then exited the home to inspect the playground area. They noticed the smell of marijuana in the backyard area of the facility as well. (Testimony of Shirah)

6.

Ms. Shirah contacted her supervisor at the Department and told her about the odor of marijuana on the premises. The supervisor instructed Ms. Shirah and her coworker not to leave the FDCH. Department employees then contacted the Athens-Clarke County Police Department and relayed what Ms. Shirah had observed. (Testimony of Shirah)

7.

Shortly thereafter, law enforcement officers arrived at the FDCH to investigate the situation. After receiving consent to search the area, the officers discovered a marijuana cigarette in the basement. (Testimony of Mary Lee Hewson)

8.

Officer Mary Lee Hewson was one of the officers sent to the scene, and interviewed Mr. Appleby. Mr. Appleby admitted that he had been smoking marijuana and that there was marijuana in the basement. He led the officers to three ounces of marijuana and drug paraphernalia also located in the basement. The officers also found a firearm in an upstairs bedroom. They arrested Mr. Appleby and charged him with felony possession of marijuana. (Testimony of Hewson)

9.

Following the incident, the Department held a staffing and the Commissioner of the Department of Early Care and Learning determined that he would issue an Order for Intended Emergency Closure to Petitioner. Petitioner requested a preliminary hearing. (Testimony of Kathleen Jayson)

CONCLUSIONS OF LAW

1.

The Department bears the burden of proof in this matter. Ga. Comp. R. & Regs. r. 616-1-

2-.07. The standard of proof is a preponderance of evidence. Ga. Comp. R. & Regs. r. 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 where a child's safety or welfare is in imminent danger. O.C.G.A. § 20-1A-13(c)(1).

3.

Petitioner is in violation of Ga. Comp. R. & Regs. r. 290-2-3-.11(3)(a)(9), which provides that a provider or a provider's employee shall not commit a criminal act in the presence of any child enrolled in the FDCH. On September 25, 2013, Petitioner's husband, Sandy Appleby, admitted to smoking marijuana on FDCH premises and was arrested for violating O.C.G.A. § 16-13-30(j)(1), a felony.

4.

Petitioner is in violation of Ga. Comp. R. & Regs. r. 290-2-3-.04(2)(c)(2)(i), which requires that no employee having an unsatisfactory criminal record check may be on FDCH premises. An employee includes an adult person who "resides at the facility. . . ." O.C.G.A. § 20-1A-30(6). An arrest and pending felony charge qualifies as an unsatisfactory records check under O.C.G.A. § 20-1A-30(4)(C). Based on Mr. Appleby's arrest and pending felony charge, he is now a person with an unsatisfactory criminal record check.

5.

Petitioner is in violation of Ga. Comp. R. & Regs. r. 290-2-3-.04(2), which provides that a person caring for more than six children for pay make an application for a license to operate a Group Day Care Home or Day Care Center. On September 25, 2013, Petitioner was caring for more than six children for pay, but she has not submitted an application for either a Group Day

Care Home or Day Care Center license.

6.

Petitioner is in violation of Ga. Comp. R. & Regs. r. 290-2-3-.07(6), which requires that the total number of children unrelated to the provider in the FDCH cannot exceed six children. On September 25, 2013, Petitioner was caring for a total of nine children who were unrelated to her.

7.

Petitioner is in violation of Ga. Comp. R. & Regs. r. 290-2-3-.07(8)(a)(3), which requires that “an employee who must be at least 16 years of age must be present to assist with supervision whenever . . . more than eight children under the age of five years are present.” On September 25, 2013, Petitioner was caring for more than eight children without an assistant.

DECISION

The foregoing violations demonstrate that there is imminent danger to the safety and welfare of the children attending Petitioner’s facility and the undersigned **AFFIRMS** the Order for Intended Emergency Closure.

SO ORDERED this 2nd day of October, 2013.

Ronit Walker
Administrative Law Judge