BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

MARTHA GREENE,	:	
	:	
Petitioner,	:	
	:	**Docket No.:**
v.	:	**OSAH-DECAL-FDCH-1336897-84-Walker**
	:	
BRIGHT FROM THE START, GEORGIA DEPARTMENT OF EARLY CARE AND LEARNING,	:	
	:	
Respondent.		

INITIAL DECISION

On March 29, 2013, Petitioner Martha Greene received a Notice of Revocation from the Georgia Department of Early Care and Learning ("Department") of her certificate of registration to operate a family day care home. Petitioner appealed the Notice of Revocation and requested an administrative hearing. The administrative hearing was held on August 14, 2013, and August 22, 2013. Following the filing of post-hearing submissions, the record closed on September 18, 2013. Laura D. Hogue, Esq. represented Petitioner, and the Department was represented by attorneys Kimberly Alexander, Christie Bearden, and Ira Sudman. For the reasons that follow, the Department's decision to revoke Petitioner's license to operate a family day care home is **REVERSED**.

I. FINDINGS OF FACT

1.

Petitioner operates a family day care home at her residence, 338 Greene Settlement Road, Gray, Georgia. She has been regulated as a day care provider for seventeen years. During this time period, the Department has not issued any negative evaluations to Petitioner, nor has it received any complaints regarding her services. (Testimony of Elizabeth Holland; Testimony of Kimberly Mitchell; Testimony of Petitioner)

2.

Petitioner cares for children as young as six weeks old. L.B., an infant born on July 18, 2012, enrolled in Petitioner's facility in September of 2012 when he was approximately two months old. He attended Petitioner's facility four days a week. (Testimony of Mrs. B.; Testimony of Petitioner)

3.

L.B. was a healthy baby boy. Developmentally, he was smiling, beginning to babble, cooing, and noticing his hands and feet. He liked to be in a bouncy seat, walker, or swing. (Testimony of Mrs. B.; Testimony of Petitioner)

4.

On December 5, 2012, L.B.'s mother got him ready for daycare. She observed that he was in a good mood and playful. L.B.'s father, C.B., brought L.B. to the Petitioner's daycare between 7:45 and 8:00 a.m. Mr. B. generally brought his son to Petitioner's daycare in the mornings. (Testimony of Mrs. B.; Testimony of Petitioner)

5.

When Mr. B. dropped L.B. off, he was asleep in his car seat. Petitioner took L.B. out of his car seat and put him in a crib to sleep. L.B. slept from 8 a.m. to 10 a.m. At 10 a.m. L.B. awoke, ate, and had a normal bowel movement. L.B. was smiling and making eye contact. After eating, L.B. went back to sleep. (Testimony of Petitioner)

6.

L.B. woke up again at 1:45 p.m. When Petitioner checked on him, she noticed that he had a soiled diaper, and that his stools were "loose," but he had not had a "major blowout." Petitioner changed L.B.'s diaper and played games, such as peekaboo, with him. L.B. also sat in his bouncy seat. At about 2:15 p.m. L.B. went back to sleep for forty five minutes. (Testimony of Petitioner)

7.

When L.B. woke up again he was crying and appeared to be hungry. Petitioner gave him a bottle to drink, and put him in his bouncy seat. Petitioner observed that he appeared active and engaged. L.B. went back to sleep after sitting in his bouncy seat. (Testimony of Petitioner)

8.

At 4:50 p.m. L.B. woke up crying. Petitioner picked him up and observed that he had had a "major blowout." She saw that diarrhea had leaked out of his diaper, soiling his clothing. When Petitioner tried to change L.B.'s diaper, the diarrhea spread to his socks, bedding and furniture. Petitioner did not observe that L.B. had a temperature or exhibited any signs of abdominal pain, nor did Department of Human Resource's guidelines direct that L.B.'s condition would warrant sending him home for the day.[1] (Testimony of Petitioner; Exhibit P-3)

9.

Petitioner decided to bathe L.B. and took him to a sink. As she removed his clothing, the back of his head bumped the countertop at the edge of the sink.[2] L.B. cried but did not lose consciousness. Petitioner picked him up to soothe him and rubbed his head. She did not notice any red spots on his scalp, swelling, a bump, or any other signs of injury. L.B. stopped crying after approximately one minute, and Petitioner rinsed him off in the sink. She then took him to the sofa and used wipes to clean his head, ears, mouth, and nose. (Testimony of Petitioner)

10.

On December 5, 2012, L.B. had not brought a change of clothes with him to the daycare. Petitioner had some of her grandson's clothing on hand so she began to put these clothes on L.B.. Petitioner stretched the clothing because L.B. was a little too big for the outfit. On at least one prior occasion L.B. had had a diaper "blowout," and Petitioner had sent him home in her grandson's clothing. As she was dressing L.B., L.B.'s grandmother, C.W., arrived to take him home. (Testimony of Petitioner; Testimony of C.W.)

11.

When his parents were not available to pick him up, Ms. W.picked up L.B. from Petitioner's daycare. Her general impression of Petitioner was that she was "nice." As the daycare was in Petitioner's home, she had also seen Petitioner's husband on the premises. Petitioner's husband was not present on December 5, 2012. (Testimony of C.W.)

12.

[1] Department of Human Resources guidelines state that a child with viral gastroenteritis may return to a daycare facility if he has no fever or vomiting and fewer than 5 stools per day. (Exhibit P-3)

[2] The Department's position is that Petitioner's credibility has been compromised because she offered conflicting accounts of the day. At one point Petitioner stated that L.B. had bumped his head on the sink; she also said that he had bumped his head on the counter. Petitioner explained at the hearing that she considered the edge of the sink and the countertop to be one general area and so she used these terms interchangeably; the undersigned does not find her statements to have been contradictory.

Ms. W.reported that when she arrived Petitioner was cleaning and changing L.B.. She thought Petitioner was a little rough while stretching her grandson's clothes and dressing L.B., and that L.B. seemed lethargic. (Testimony of C.W.)

13.

Ms. W.told Petitioner she was in a rush to go because she had to pick up her son. Petitioner finished dressing L.B., hugged and kissed him, and then handed him to Ms. Williams. She left with L.B. around 5:15. (Testimony of C.W.)

14.

Ms. W.testified that she felt uncomfortable with L.B.'s demeanor at the facility and was anxious to leave, noting that he seemed ill. He was lethargic, making a strange noise, and did not resist going into his car seat. Typically, L.B. was playful and did not want to go in his car seat.[3] (Testimony of C.W.)

15.

Ms. W.testified that when she put L.B. in her truck he started gasping for air, rolled his eyes back, and stopped breathing. Ms. W.took L.B. home and called her son to tell him she was concerned about L.B.. She did not take L.B. to the emergency room or urgent care, nor did she call 911 or L.B.'s pediatrician. (Testimony of C.W.)

16.

Mr. B. picked up L.B. and brought him home. L.B. was asleep in his car seat. Deciding not to wake him, L.B.'s parents left him in the car seat and put the car seat in L.B.'s crib. Mr. B. told his wife that Ms. W. was concerned about L.B. and coming over to talk to Ms. B. about what she had observed. (Testimony of Mrs. B.)

17.

[3] The Department also maintains that Petitioner's version of what occurred has not been consistent and that this is further evidence that she is not credible. In support, the Department points to Ms. W's testimony that Petitioner told her L.B. had not slept all day. Petitioner maintains that L.B. slept most of the day, and that she did not tell Ms. W. otherwise. Petitioner has stated that L.B. slept most of the day in all of her subsequent interviews and testimony. On December 18, 2012, shortly after the incident, Ms. W produced a written statement. In her written statement, Ms. W. did not mention that Petitioner told her that L.B. had not slept all day. Given that Ms. W. was in a hurry and anxious to leave, the undersigned finds it more likely than not the Ms. W misunderstood Petitioner and thus that Petitioner's statements regarding whether or not L.B. slept during the day, like her statements regarding whether L.B.'s head hit the sink or countertop, have not been inconsistent.

There were three children left in Petitioner's care after L.B. had departed. The last child was picked up around 5:45 p.m. After cleaning the facility, Petitioner called Ms. B. at 6:10 p.m. Petitioner told Ms. B. that L.B. had been sleepy during the day, and that he had had diarrhea. She also told Ms. B. that L.B. had bumped the back of his head while she was trying to rinse him off. Petitioner told Ms. B. that he might be coming down with a virus. She suggested that Ms. B. might want to check on him and wake him up to make sure he was feeling alright. (Testimony of Mrs. B.; Testimony of Petitioner)

18.

After Ms. B. finished speaking with Petitioner, she went to check on L.B.. She observed that he was limp, barely breathing, and not making eye contact. Mr. and Mrs. B. immediately left to take L.B. to the emergency room. (Testimony of Mrs. B.)

19.

At 6:36 p.m. Ms. B. called Petitioner and told her that she was taking L.B. to the hospital and needed to know exactly what had happened to him. Petitioner reported that L.B. had bumped his head, he had not lost consciousness, and she had consoled him briefly until he stopped crying. (Testimony of Mrs. B.; Testimony of Petitioner)

A. Coliseum Health System

20.

The B.s took L.B. to the Coliseum Health System (hereinafter "Coliseum"). L.B.'s symptoms appeared to resolve quickly; the medical records from the Coliseum reflect that upon admission L.B. was alert, suffering no acute distress, moving all extremities, making good eye contact, and easily aroused. His vital signs were normal, and he showed no visible trauma to his scalp. (Exhibit P-10)

21.

Based on the B.s' report of what had transpired, Coliseum staff performed a Computed Tomography (hereinafter "CT") scan on L.B.'s brain. The CT report indicated that L.B. was suffering from acute and chronic subdural hemorrhages. Based on this report, Coliseum medical staff transferred L.B. to the Medical Center of Central Georgia, Children's Hospital (hereinafter "Children's Hospital") by ambulance. While L.B. was being examined and treated, Petitioner called Ms. B. several times to ask about his condition. Petitioner also called Bright from the Start and reported the incident. (Testimony of Mrs. B.; Testimony of Petitioner; Exhibit P-10)

B. Children's Hospital

22.

L.B. arrived at Children's Hospital, alert, in no distress, and with normal strength. Dr. Jean Dozier assessed L.B. and found he was "neurologically intact without any focal deficit" and "otherwise at baseline . . . ." L.B. had no bruising or markings on his body. The Coliseum's CT report indicated that L.B. was suffering from acute and chronic subdural hemorrhages. (Exhibits P-10; R-3)

23.

Dr. Yameka Head is board certified in Pediatrics and is a member of the American Academy of Pediatrics. She has also completed a fellowship in Pediatric Forensics. She practices at Children's Hospital and has lectured in the areas of child maltreatment, abusive head trauma, and neglect. (Testimony of Yameka Head; Exhibit R-10)

24.

On December 6, 2012, Dr. Head examined L.B. for possible maltreatment. She spoke with L.B.'s parents about his symptoms, medical history, and their account of what had happened during the day. She then examined L.B. and noticed that he was stable but sleepy. The initial CT scan performed at Coliseum was not available for her assessment; however, Dr. Head reviewed the Coliseum's CT report.[4] The Coliseum's CT report indicated that L.B. was suffering from acute and chronic subdural hemorrhages. As to the acute hemorrhages, the report noted "[f]indings suspicious for a small collection of acute subdural hemorrhage along the left temporal lobe . . . ." Acute and chronic subdural hemorrhages are consistent with abusive head trauma. (Testimony of Yameka Head; Exhibit P-10)

25.

According to Dr. Head, acute subdural hemorrhaging would have taken place within 48 hours of admission to Coliseum, while chronic subdural hemorrhaging would have taken place two or more weeks before admission. (Testimony of Yameka Head)

26.

Children's Hospital performed a second CT scan and a Magnetic Resonance Imaging (hereinafter "MRI") scan. Although the Coliseum CT report had indicated "questionable acute

[4] In her testimony, Dr. Head referred to L.B. vomiting; however, none of the medical records reflect that L.B. vomited while being examined.

appearing blood," the second scan did not find "the tiny amount of acute appearing hemorrhage that was seen yesterday in the left temporal region in the subdural space . . . ." Accordingly, the second CT scan did not reflect any acute bleeding, only the chronic subdural hemorrhages.[5] After receiving this information, Dr. Head screened L.B. for other causes that might produce chronic subdural hemorrhages, including bleeding disorders or metabolic disorders, but found no evidence of any of these conditions. (Testimony of Yameka Head; Exhibits P-10; R-3)

27.

Dr. Felicity Quansah is a board certified ophthalmologist. She was on call the day that L.B. was brought into the Children's Hospital and reviewed radiological images taken of L.B.'s eyes. Dr. Quansah saw numerous hemorrhages in both eyes. Such hemorrhages are not typically seen. Based on her review, Dr. Quansah could not rule out the possibility that L.B. had been subjected to a non-accidental injury, such as abusive head trauma. (Testimony of Felicity Quansah; Exhibits R-1; R-2)

28.

After a review of L.B.'s records, Dr. Head concluded that the symptoms L.B. exhibited, excluding the diarrhea, were all consistent with abusive head trauma. Dr. Head met with L.B.'s parents and reported to them that it appeared that L.B. had suffered abusive head trauma. (Testimony of Yameka Head; Testimony of Mrs. B.; Exhibit R-3)

29.

Dr. Head had no concerns about releasing L.B. to his parents' custody, and L.B. was discharged to his parents on December 11, 2013. On January 3, 2013, his mother took him for a follow up visit to the ophthalmologist. Almost all of the retinal hemorrhages previously seen had resolved. However, an MRI performed on January 24, 2013 still reflected chronic subdural hemorrhages. (Testimony of Yameka Head; Exhibit R-6)

C. Expert Testimony

30.

Dr. Virginia Jordan Greenbaum is board certified in anatomic and forensic pathology. Dr. Greenbaum currently serves as Medical Director of the Stephanie Blank Center for Safe and

[5] Medical reports from Children's Hospital indicated that "[s]ubdural hematomas are bleeding into the potential space (subdural space) surrounding the brain. This bleeding is caused by rotational acceleration/deceleration forces that cause the blood vessels in that subdural space to break and thus cause bleeding." This is otherwise known as "shaken baby syndrome." (Testimony of Yameka Head; Exhibit R-3)

Healthy Children, Children's Healthcare of Atlanta, and has extensive experience as a physician specializing in child abuse. (Exhibit R-5)

31.

In July of 2013, the Department contacted Dr. Greenbaum and asked her to review L.B.'s case.[6] The Department provided Dr. Greenbaum with a number of L.B.'s medical records, but did not provide a copy of the CT scan conducted at Coliseum.[7] The Department also provided Dr. Greenbaum with copies of interviews conducted regarding the incident. (Testimony of Jordan Greenbaum; Exhibit R-6)

32.

After reviewing the materials provided by the Department, Dr. Greenbaum also noted that the scans reflected "[t]iny areas of blood products" in L.B.'s brain. She determined that the major findings that required explanation included "the older [subdural hematomas], the retinal hemorrhages, the dots of blood products within the brain and the transient altered mental status." An analysis of these factors prompted her to conclude "within a reasonable degree of medical certainty that there was a high conclusion that abuse had occurred, at least one episode." The abuse was likely abusive head trauma that involved forceful, typically repeated, acceleration/deceleration of the head, such as with violent shaking. In her opinion, L.B.'s case fell in the upper quartile as to the likelihood of physical abuse having taken place. (Testimony of Jordan Greenbaum; Exhibit R-6)

1. Subdural Hematomas

33.

Acute and chronic subdural hemorrhages are consistent with abusive head trauma. According to Dr. Greenbaum, a "recent episode of clinically apparent [abusive head trauma] usually has associated acute blood in the subdural space." Bumping an infant's head would not result in either subdural or retinal hemorrhages because there needs to be repeated rotational forces to cause such injury. (Testimony of Jordan Greenbaum; Exhibit R-6)

34.

[6] Dr. Greenbaum is known as "Jordan Greenbaum." (Testimony of Jordan Greenbaum)

[7] Dr. Greenbaum reviewed: medical records from the Coliseum Health System; partial medical records from the medical center of Central Georgia with imaging studies; medical records from Children's Healthcare of Atlanta; medical records from Eye Consultants of Atlanta; medical records from Georgia Eye Center; and medical records from Primary Pediatrics. (Exhibit R-6)

Although she was not able to review the Coliseum's CT scan,[8] the Coliseum's CT report had noted "[f]indings suspicious for a small collection of acute subdural hemorrhage along the left temporal lobe . . . ." However, on the following day the "MRI [performed at Children's Hospital] showed only older large subdural collections of indeterminate age, without an acute component . . . ." While it is possible that the acute bleeding had been reabsorbed by the time the second scan was performed, Dr. Greenbaum concluded that "[i]n the present case, it is unclear if acute blood was noted . . . ." (Testimony of Jordan Greenbaum; Testimony of Yameka Head; Exhibits P-10; R-6)

35.

Scans of L.B.'s brain performed at Coliseum, Children's Hospital, and six weeks after the incident, on January 24, 2013, all reflected chronic subdural hemorrhages in L.B.'s brain. Dr. Greenbaum concluded that the presence of these chronic subdural hemorrhages made it likely that L.B. had been subjected to at least one older traumatic incident, and possibly multiple traumatic incidents, at least a few weeks prior to December 5, 2013. Nonetheless, Dr. Greenbaum could not exclude the possibility that the chronic subdural hemorrhaging could have been caused by birth trauma such that birth-related subdural hematomas developed into chronic hematomas. (Testimony of Jordan Greenbaum; Exhibit R-6)

2. Retinal Hemorrhages

36.

The examinations performed at Children's Hospital indicated that L.B. had numerous retinal hemorrhages in his eyes. Retinal hemorrhages, or torn blood vessels in the eyes, suggest that a child has been shaken. These hemorrhages appear in at least 85% of abused children. Bumping an infant's head would not result retinal hemorrhages because there needs to be repeated rotational forces to cause such an injury. (Testimony of Jordan Greenbaum; Exhibits R-1; R-2; R-6)

37.

In her report, Dr. Greenbaum noted that "the widespread nature of the [retinal hemorrhages] may reflect multiple recent head injury events." It was not possible to conclude with any accuracy when the retinal hemorrhaging might have occurred, but Dr. Head's report

[8] The CT scan was not available for review by any of the experts nor was it tendered into the record.

noted that L.B.'s retinal hemorrhages were acute, "which points [to the fact] that a traumatic event occurred recently." While retinal hemorrhages could be caused by birth trauma, these breakages would usually clear within a week, with the upper range being six weeks after birth. The majority of L.B.'s retinal hemorrhages resolved approximately one month from his initial examination. (Testimony of Jordan Greenbaum; Exhibit R-6)

3. Dots of Blood Products in the Brain

38.

In her report, Dr. Greenbaum referenced the fact that "[t]iny areas of blood products were noted within the posterior aspect of the brain and were of unclear age." These "punctate" hemorrhages are not typical findings in abusive head trauma cases, and she could not rule out that they might have been related to birth trauma. (Exhibit R-6)

4. Transient Altered Mental Status

39.

The fact that L.B. was poorly responsive and had transient symptoms is consistent with an abusive incident. Although his symptoms resolved quickly, even before he reached the hospital, this may have been due to the fact that his injury was not that severe. Dr. Greenbaum reviewed L.B.'s symptomology on December 5, 2012, and concluded that a minor head injury would not have caused his symptoms. She noted that L.B. had no bruising or markings on his body; however, thirty percent of children subjected to abusive head trauma display no indications of bruising. (Testimony of Jordan Greenbaum; Exhibits R-5; R-6)

40.

After a review of the evidence, Dr. Greenbaum found that it was probable that an episode of abuse occurred while L.B. was in Petitioner's custody, but that "the timing of the event cannot be concluded with certainty . . . ." In drawing her conclusions she relied on L.B.'s physical manifestations and in part on her belief that Petitioner had made inconsistent statements about the incident. (Testimony Jordan Greenbaum; Exhibit R-6)

41.

Dr. Joseph Scheller is a board certified Pediatrician and Neurologist. He has testified in approximately fifty cases involving alleged child abuse. He always has testified as a defense witness. (Testimony of Dr. Scheller; Exhibit P-8)

42.

Dr. Scheller reviewed L.B.'s medical records, including birth records, pediatric visits, hospital records, and scans. Based on his review, Dr. Scheller did not find any evidence of brain injury or accidental or inflicted head trauma. Dr. Scheller opined that L.B. had a "chronic collection of fluid in between the surface of his brain and skull," often referred to as external hydrocephalus or BESS, benign enlargement of the subdural space. This syndrome is thought to occur "in otherwise normal children who have larger than normal head sizes." Dr. Scheller believed that the condition might have been triggered by the use of a vacuum device during L.B.'s birth. (Exhibit P-14)

43.

As to the retinal hemorrhages, Dr. Scheller concluded that "[t]hese are a well known complication of subarachnoid (brain surface) hemorrhage" or Terson's Syndrome. He also concluded that the retinal hemorrhages "were not the result of an accidental or inflicted brain injury." He opined that L.B. was not subjected to child abuse but had a "chronic and benign medical condition related to his vacuum assisted delivery." (Exhibit P-14)

44.

Dr. Scheller determined that L.B.'s symptoms could have been the result of a small seizure precipitated by the head bump. His symptoms resolved quickly because the trauma was relatively minor. (Testimony of Dr. Scheller)

45.

Dr. Greenbaum and Dr. Head generally rejected Dr. Scheller's findings, and the undersigned agrees that he was not a credible expert in this case as to the following conclusions. Dr. Head determined that L.B. does not "have findings that are consistent with 'external hydroocephalus . . . .'" As to whether L.B. likely suffered from Terson's syndrome, Dr. Head asserted that Terson's syndrome was an unlikely cause of L.B.'s hemorrhages given the number of broken vessels and the fact that there have only been two documented cases in infants, and both of those cases involved aneurysms. (Testimony of Jordan Greenbaum; Testimony of Yameka Head; Exhibits R-4; R-6)

D. Testimony of Current and Former Daycare Customers

46.

Amanda Chancey has three children who all attended Petitioner's daycare for years. If one of Ms. Chancey's children was ill, Petitioner would call her immediately. She never had any concerns about the safety and well-being of her children. In her experience, Petitioner is truthful, gentle, and patient. (Testimony of Amanda Chancey)

47.

Jamie Roland's two children also attended Petitioner's daycare. Her son was attending Petitioner's daycare in December of 2012. She became aware of the instant allegations against Petitioner, but decided to keep her son enrolled in Petitioner's daycare until he began school this past August. She believes Petitioner is honest, patient and gentle, and she was not concerned about her child's safety or well-being while he attended the daycare. Petitioner always contacted Ms. Roland if she had a concern about her children's health. (Testimony of Jamie Roland)

48.

Ashley Ivy's children currently attend Petitioner's daycare. She is aware of the instant allegations against Petitioner. If she believed her children were in any danger she would not hesitate to remove them from the daycare. Petitioner is like a "grandma" to her children, and is patient, kind and loving to her children. Petitioner has called her about her children's health, and she would expect Petitioner to contact her if her child had diarrhea. (Testimony of Ashley Ivy)

49.

Melissa Derubbo's youngest child attended Petitioner's daycare from the age of six weeks until she was four years old. She observed that Petitioner was patient, kind, and trustworthy, noting Petitioner "had more patience than I did." Petitioner always called if she had a health concern even if it was "nothing." (Testimony of Melissa Derubbo)

50.

Linda Bowden has two children that attended Petitioner's daycare. Petitioner was "awesome with kids" and always honest and open with Ms. Bowden. (Testimony of Linda Bowden)

51.

Macy Fox is employed by the Department of Family and Children Services. Petitioner provided childcare for her children for three and a half years. Ms. Fox observed Petitioner's

interactions with the children at the daycare and believed that Petitioner was a trustworthy caretaker. Petitioner kept Ms. Fox informed about important developments, sometimes at the end of the day. (Testimony of Macy Fox)

52.

Allison Randall's three children all attended Petitioner's daycare from the time that they were infants until they were four years old. Ms. Randall's children loved going to daycare, and she also believes that Petitioner "loves children." Petitioner was responsible about keeping Ms. Randall informed and had a reputation for being caring, patient, and honest. (Testimony of Allison Randall)

53.

Misty Todd's youngest child attended Petitioner's daycare. She observed Petitioner in the mornings and afternoons and believed Petitioner was "great with kids." She trusted Petitioner and was never concerned about her child's safety. (Testimony of Misty Todd)

54.

Sandra Watson also put her youngest child in Petitioner's daycare facility. She observed Petitioner was patient, gentle, and good with children. (Testimony of Sandra Watson)

55.

Brandy Stokes's youngest child attended Petitioner's daycare in December of 2012 and remained there until June of 2013. She was aware of the allegations, but she believes Petitioner to be truthful and did not have any reservations about keeping her child at the facility. (Testimony of Brandy Stokes)

56.

Petitioner testified at the hearing that she has cared for many children, including her four own children and six grandchildren, throughout the years. She maintained that she has never harmed a child, would not harm a child and that she did not harm L.B. on December 5, 2012. (Testimony of Petitioner)

57.

At the present time, L.B. is walking, healthy, and happy. There does not appear to be any bleeding in his brain or eyes. His physicians believe that he is developmentally on track, and that there is no residual damage to the brain. (Testimony of Mrs. B.; Testimony of Jordan Greenbaum)

II. 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 Department must protect the safety and well-being of the children in the custody of childcare providers. Thus, it has the authority to revoke Petitioner's license for any number of reasons, including the failure to comply with licensing requirements or the failure to comply with any provision of the law. O.C.G.A. §§ 20-1A-12(b)(3), -12(b)(5), and -12(c)(5). Once a violation of either type has been established, the Department may revoke a license to operate a family day care facility. O.C.G.A. § 20-1A-12(c)(5). The Department seeks revocation in this instance.

A. Ga. Comp. R. & Regs. r. 290-2-3-.11(3)(a)(3)

3.

The Department alleges that Petitioner failed to comply with Ga. Comp. R. & Regs. r. 290-2-3-.11(3)(a)(3), which provides that a family day care home provider or employee shall not shake, jerk, pinch or handle roughly a child. This is a very serious allegation, as the consequences to a child of such action can be severe. After considering all of the evidence submitted, the undersigned comes to the conclusion that the Department did not prove this allegation by a preponderance of the evidence.

4.

First, the Department, and the experts who evaluated the evidence for the Department, placed significant weight on Petitioner's alleged conflicting statements regarding what had occurred. Dr. Green expressly stated that she relied not only on L.B.'s physical manifestations, but also on the "[t]he changes in the sitter's history . . . ." As detailed in the findings of fact, the undersigned does not conclude that Petitioner gave conflicting statements; instead, the undersigned finds that her statements of what had occurred on December 5, 2012, were

consistent over time. Further, there is independent evidence to corroborate Petitioner's version of events. Petitioner stated that L.B. had soiled himself, and the evidence indicates that he did have diarrhea that day. Prior to December 5, 2012, L.B. had had at least one other episode of diarrhea severe enough to warrant sending him home in a change of clothes. As Dr. Head noted, diarrhea is not indicative of abuse. Petitioner also stated that she did not notice that L.B. had any swelling or a bump on his head; her observation is also consistent with the findings both at the Coliseum and at Children's Hospital.

5.

Second, the evidence as to whether L.B. suffered an acute subdural hemorrhaging is inconclusive. Evidence of an acute subdural hemorrhage would indicate that any trauma that had occurred had taken place within 48 hours of L.B.'s admission. The CT report of the CT scan performed at the Coliseum indicated "[f]indings suspicious for a small collection of acute subdural hemorrhage along the left temporal lobe . . . ." Critically, the CT scan performed at the Coliseum was not available for review by any other physician. One day later, a second scan performed at Children's Hospital did not find "the tiny amount of acute appearing hemorrhage that was seen yesterday in the left temporal region in the subdural space . . . ." While it is conceivable that this blood was reabsorbed, even the Department's expert Dr. Greenbaum concluded that that "[i]n the present case, it is unclear if acute blood was noted . . . ."

6.

Third, the chronic subdural hemorrhages do not, in and of themselves, indicate that there was abuse. As Dr. Greenbaum noted, it is possible that birth trauma caused these hemorrhages. Coupled with the retinal hemorrhaging found in L.B.'s eyes, however, it seems more likely than not that L.B. was subjected to head trauma.

7.

Scans of L.B.'s brain performed at the Coliseum, Children's Hospital, and six weeks after the incident, on January 24, 2013, all reflected chronic subdural hemorrhages in L.B.'s brain. Dr. Greenbaum concluded that the presence of these chronic subdural hemorrhages made it likely that L.B. had been subjected to at least one older traumatic incident, and possibly multiple traumatic incidents, at least a few weeks prior to December 5, 2013, but that "the timing of the event cannot be concluded with certainty . . . ." Given that the chronic subdural hemorrhaging occurred at least two weeks prior to December 5, 2013, and that the chronic subdural hemorrhaging was still found six weeks after L.B. had left Petitioner's daycare, it is not possible

to conclude by a preponderance of an evidence that it was trauma inflicted by Petitioner that caused these chronic subdural hemorrhages.[9]

8.

As to the symptoms exhibited by L.B., thankfully such symptoms were short-lived and resolved before his arrival at the Coliseum. Without the supporting evidence that Petitioner's statements changed over time, or that there was acute subdural hemorrhaging, these symptoms in and of themselves are not sufficient to prove by a preponderance of the evidence that Petitioner shook, jerked, pinched or handled L.B. roughly.

9.

Finally, the evidence presented by Petitioner regarding her history, reputation, and demeanor was compelling. While the experts referred to Petitioner as a "babysitter" in their reports, Petitioner has been a professional daycare provider for seventeen years, as well as being a mother and a grandmother. She has never been cited by the Department, nor have there been any complaints filed against her in the past. Multiple customers describe Petitioner as patient, gentle, kind, and honest. The Department did not offer any explanation as to why an experienced daycare provider, with a flawless record, would suddenly become violent and abusive towards a child, a child who by all accounts was a happy, healthy, and adorable infant.

10.

While the Department appeared to find Petitioner's repeated calls expressing concern for L.B. suspicious, such behavior was in keeping with the descriptions offered by her current and previous customers that she was a caring and concerned caretaker. Ms. Derubbo, a former customer, testified that Petitioner always called if she had a health concern even if it was "nothing," and Macy Fox noted that Petitioner would inform her about important developments, sometimes at the end of the day. Even after these allegations surfaced, many parents whose children were currently attending Petitioner's daycare were so confident that the allegations were false, and that Petitioner would never harm a child, that they left their children in her care.

[9] Neither party introduced any evidence regarding individuals, other than L.B.'s parents and grandmother, who had contact with L.B. prior to December 5, 2012.

B. Ga. Comp. R. & Regs. r. 290-2-3-.11(1)(c)

11.

The Department's second allegation is that Petitioner has failed to comply with Ga. Comp. R. & Regs. r. 290-2-3-.11(1)(c), which provides, in part, that the parent of any child who becomes ill or injured while in care shall be notified immediately of any illness or injury requiring professional medical attention, or any illness which may not require professional medical attention but which produces symptoms causing moderate discomfort to the child. The evidence is that on December 5, 2012, L.B. was sleepy, had one loose stool, and one episode of diarrhea. L.B. did not have a fever, cry incessantly, or appear to be in gastrointestinal distress. As to the bump on his head, Petitioner testified that the bump did not cause swelling, bruising or a lump, and that L.B. had cried for just a short while before she was able to calm him.

12.

The Department did not prove that any of these occurrences would require professional medical attention. To the contrary, Department of Human Resources guidelines in the case of intestinal discomfort do not support such a conclusion. As to the bump, Petitioner was able to calm L.B. in a short time. Given the circumstances, Petitioner did not violate the regulation. In any event, even if notification was warranted, Petitioner's notification was reasonable under the circumstances. The diarrhea and bump occurred in the late afternoon, almost as L.B. was leaving the daycare with Ms. Williams. Petitioner called Ms. B. to inform her about what had happened in the early evening around 6:10, approximately an hour after L.B. left for the day.

C. Ga. Comp. R. & Regs. r. 290-2-3-.11(1)(d)

13.

The Department's third allegation is that Petitioner failed to comply with Ga. Comp. R. & Regs. r. 290-2-3-.11(1)(d), which provides that the family day care home shall obtain emergency medical services when required by a child's condition. There was no indication that L.B. stopped breathing or lost consciousness while in Petitioner's custody. The evidence presented at the hearing did not prove by a preponderance that L.B.'s condition on December 5, 2012, required that Petitioner obtain emergency medical services.

14.

The allegations in this case are extremely serious, and the undersigned does not reach these conclusions of law without having carefully considered the evidence and circumstances introduced at the hearing. After reviewing all of the evidence submitted, the undersigned comes to the conclusion that the Department did not prove the alleged allegations by a preponderance of the evidence and revocation of Petitioner's license is not warranted.

III. DECISION

For the reasons stated, the Department's revocation of Petitioner's license to operate a family day care home is hereby **REVERSED**.

SO ORDERED, this 9th day of October, 2013.

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RONIT WALKER
Administrative Law Judge