

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

SABRINA MARLA WILLIAMS,
Petitioner,

v.

GEORGIA DEPARTMENT OF EARLY CARE
AND LEARNING,
Respondent.

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Docket No.: OSAH-DECAL-CRC-1407600-48-
Brown / Woodard
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DEC 16 2013

INITIAL DECISION

I. Introduction


Kevin Westray, Legal Assistant

This matter is the administrative review of the decision of the Department of Early Care and Learning that a criminal record precludes Petitioner from living in, owning, or operating an unregulated Family Day Care Center. Respondent's decision is hereby AFFIRMED.

II. Findings of Fact

The Judge has considered the entire evidence presented at the hearing on October 11, 2013, and based upon a preponderance of the evidence make the following findings of fact.

1.

Petitioner operates a Family Day Care facility. As a condition for operating such a facility, Petitioner was required to submit a criminal records check application to Respondent.

2.

Respondent notified Petitioner in writing that Petitioner's criminal records check was unsatisfactory based upon the final disposition entered May 5, 2010 in Henry County Superior Court in *State v. Sabrina Marie Williams, 2009-SU-CR-641-19*. Petitioner pled guilty to one count of felony Aggravated Assault, and one count of misdemeanor Simple Battery. Petitioner received ten years' incarceration on the felony conviction, and 12 months incarceration on the misdemeanor, but also was granted First Offender treatment and judgment of guilt was deferred.

3.

The unsatisfactory criminal records check prohibits Petitioner from operating a family day care facility in her home. Petitioner appealed Respondent's action, and this matter was referred to the Office of State Administrative Hearings for adjudication.

4.

The Bill of Indictment handed down by the Henry County Grand Jury on the Aggravated Assault charge states as follows:

...on the 25th day of April, 2009, [Petitioner] did then and there unlawfully make an assault upon the person of Gwendolyn Jordan, with a motor vehicle, an object which when used offensively against

another is likely to result in serious bodily injury, by rolling up the window of said motor vehicle on Gwendolyn Jordan's arm and driving off with Gwendolyn Jordan hanging on the side of the motor vehicle.....

The Simple Battery indictment reads as follows:

...on the 25th day of April, 2009, [Petitioner] did then and there unlawfully and intentionally cause physical harm to Quinton Jordan, by striking said Quinton Jordan about the body....

5.

Petitioner testified that Quinton Jordan is her son's father, and Gwendolyn Jordan is Quinton's mother. Their son was staying with Quinton Jordan when Petitioner arrived to pick him up. Petitioner found that her son was sick, and underdressed for the weather. Petitioner was upset that her son was poorly cared for by Quinton Jordan, and they got into a fight. Petitioner testified that Mr. Jordan hit her, then she hit him back.

6.

Gwendolyn Jordan stepped in to the fracas, and tried to prevent Petitioner from leaving Mr. Jordan's home with the child. Petitioner testified that both she and Gwendolyn Jordan struck each other with their fists. Petitioner tried to escape from Gwendolyn Jordan to reach her car, and succeeded in putting the child in the car and starting the engine. However, before she could drive off, Gwendolyn Jordan stuck her arm into the car, apparently to either cause harm to Petitioner or to take the child out of the car. As stated in the Indictment, Petitioner rolled up the car window on Gwendolyn Jordan's arm, and dragged her along as she drove away. Eventually, Gwendolyn Jordan freed her arm from Petitioner's car window, and Petitioner successfully drove off with her child.

7.

Later, Petitioner was arrested and charged with Aggravated Assault and Simple Battery. She testified that her Public Defender advised her to plead guilty and receive First Offender treatment. Petitioner states that this is the only arrest or conviction she has ever had for a crime involving violence or physical harm to another person.

III. Conclusions of Law

1.

Respondent has the burden of proof in this matter. OSAH Rule 7. The standard of proof on all issues is a preponderance of the evidence. OSAH Rule 21(4).

2.

All directors and employees of a licensed or registered day-care center, group day-care home, family day-care home, or child care learning center are required to submit to a criminal records check. O.C.G.A. § 20-1A-33. Anyone living in the family day care home must submit to a criminal records check, as well.

3.

If the fingerprint records check determination was unsatisfactory as to the director of a center, the center shall designate another director and obtain state and national fingerprint record checks for that newly designated director. If the preliminary records check for any employee other than the director revealed a criminal record of any kind, such employee shall not be allowed to work in the center until he or she either has obtained

satisfactory state and national fingerprint records check determinations or has had the unsatisfactory determination reversed. If the determination was unsatisfactory as to any employee of an applicant's facility, the center shall, after receiving notification of that determination, take such steps as are necessary so that such person is no longer an employee. Id; Rule 591-1-1-.09.

4.

Notwithstanding the provisions of O.C.G.A. § 20-1A-33, upon motion by any party, matters in mitigation of any conviction may be considered 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. § 20-1A-43.


5.

Petitioner was arrested and convicted for Aggravated Assault and Simple Battery. The incident leading up to these convictions involved physical harm to two individuals. Further, the Petitioner's behavior during this incident and her subsequent conviction on criminal offenses involving violence or physical harm to others shows her propensity for cruel behavior. Therefore, mitigation under O.C.G.A. § 20-1A-23 is not possible in this case.

IV. Decision

IT IS HEREBY ORDERED THAT Respondent's determination regarding preliminary or fingerprint records checks or its action revoking, suspending, or refusing to grant or renew a license based upon such determination is **AFFIRMED**. Petitioner's motion to be allowed to continue to live in, own, or operate a family day care home as an exception to the sanctions normally imposed in such circumstances is **DENIED**.

SO ORDERED this the 13th day of December, 2013.


M. PATRICK WOODARD, JR.
ADMINISTRATIVE LAW JUDGE