



FILED
OSAH

MAY 23 2014

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[REDACTED],
Petitioner,
v.
GEORGIA DEPARTMENT OF EARLY
CARE AND LEARNING,
Respondent.

K. Westray
Kevin Westray, Legal Assistant

Docket No.:
OSAH-DECAL-FDCH-[REDACTED] Miller

FINAL DECISION
ORDER AFFIRMING EMERGENCY CLOSURE

I. INTRODUCTION

This matter is an appeal by the Petitioner, [REDACTED] of the Order for Intended Emergency Closure of her licensed family day care home issued on May 16, 2014, by the Commissioner for the Georgia Department of Early Care and Learning ("Department"). A preliminary hearing pursuant to O.C.G.A. § 20-1A-13 was held on May 22, 2014, before the undersigned Administrative Law Judge of the Office of State Administrative Hearings.

The Petitioner appeared and was represented by Allan Alberga, Esq. The Department was represented by Clare Michaud, Esq. After careful consideration of the evidence and the arguments of the parties, and for the reasons set forth below, the Order for Intended Emergency Closure is hereby **AFFIRMED**.

II. FINDINGS OF FACT

1.

The Petitioner owns and operates a family day care home at her personal residence in Lithonia, Georgia. The Petitioner has provided care to [REDACTED] [REDACTED] a sixteen-month-old toddler, since March 3, 2014. (Testimony of [REDACTED] [REDACTED] Cassandra Jenkins, and Petitioner.)

2.

On the morning of March 16, 2014, [REDACTED] mother, [REDACTED] [REDACTED]¹ went into his bedroom to awaken him. Myles stood up in his crib immediately and began babbling. As was her usual routine, Ms. [REDACTED] changed his diaper, dressed him, washed his face, and brushed his teeth. She noticed nothing unusual about [REDACTED] that morning. He made eye contact with her, interacted with her, and did not seem ill in any way. (Testimony of Ms. [REDACTED])

3.

[REDACTED] and Ms. [REDACTED] arrived at the Petitioner's home at approximately 7:45 a.m. Ms. [REDACTED] signed [REDACTED] in, turned him over to the Petitioner, and left for work. (Testimony of Ms. [REDACTED] and Petitioner.)

4.

Later that morning, at 9:13 a.m., Ms. [REDACTED] received a call from the Petitioner. The Petitioner reported that paramedics wanted Ms. [REDACTED] to meet them at Egleston Children's Hospital because [REDACTED] was having a seizure. The Petitioner further stated that [REDACTED] had thrown himself to the floor during a fit of screaming and that when she went to pick him up, he became quiet and his mouth would not open. At that point, the Petitioner dialed 911. (Testimony of Ms. [REDACTED] and Petitioner.)

5.

At the hearing, the Petitioner testified that when [REDACTED] arrived at her home that morning, he ate a breakfast of waffles, blueberries, orange juice, and milk. After breakfast, he played with blocks that she put out for him. A short time later, he had a bowel movement. The Petitioner changed his diaper, then returned him to a standing position on the floor. According to the Petitioner, when she walked to the bathroom to dispose of his soiled diaper, she heard him

¹ Ms. [REDACTED] does not reside with [REDACTED] father, but both parents care for [REDACTED] regularly. (Testimony of Ms. [REDACTED])

scream. She testified that she ran back to the room and found [REDACTED] lying on the floor. Initially, she suspected that he was choking, and turned him on his side. When she determined that he was having a seizure, she called 911. (Testimony of Petitioner.)

6.

At the hospital, [REDACTED] team of physicians determined that he had sustained life-threatening injuries consistent with physical abuse. More specifically, he had a large subdural hematoma on the right side of his brain, which was causing a buildup of intracranial pressure. He also exhibited bilateral retinal hemorrhaging. It is unlikely that these injuries could have been self-inflicted or the result of a fall from a standing position, as described by the Petitioner. Rather, [REDACTED] subdural hematoma and retinal hemorrhaging were consistent with a forceful shaking or other head trauma of sufficient velocity to cause his brain to move separately from his skull. (Testimony of Dr. Tamika Bryant.)

7.

[REDACTED] underwent an emergency craniotomy to evacuate the blood and reduce the pressure on his brain. At present, he is being treated in the hospital's intensive care unit. His prognosis is uncertain and includes a risk of death. (Testimony of Dr. Bryant.)

8.

Due to his precarious medical condition, [REDACTED] physicians have been unable to complete a definitive skeletal survey. However, they have observed that four of his lumbar vertebrae exhibit a flattening that suggests compression fractures. Compression fractures of the vertebrae can occur when a child is slammed down forcefully onto his buttocks or falls on his buttocks from a significant height (such as a top bunk or the top of a slide). Compression fractures can also be caused by a hyperflexion injury, which may occur when a child is bent forcefully in half,

toward his toes. Compression fractures are not consistent with a child's self-inflicted injury or a fall from a standing position. (Testimony of Dr. Bryant.)

9.

Prior to May 16, 2014, [REDACTED] had never had a seizure. Although he was born prematurely, he never exhibited any problems that would predispose him to this type of injury. (Testimony of Ms. [REDACTED] and Dr. Bryant.)

10.

The reliable medical evidence indicates that [REDACTED] sustained his injuries at the Petitioner's home. Given the severity of his injuries, the onset of symptoms following the trauma would have been rapid. These symptoms, which would have ranged from sleepiness or fussiness to nonresponsiveness, vomiting, and seizures, would have been present almost immediately, and would have worsened over a period of minutes or hours. If [REDACTED] had been injured before he arrived at the Petitioner's home, he would not have been expected to eat a normal breakfast and to otherwise exhibit no obvious distress, as described by the Petitioner. (Testimony of Dr. Bryant and Petitioner.)

11.

There is no evidence that any other adult was present in the Petitioner's home when [REDACTED] sustained his injuries. (Testimony of Petitioner.)

12.

At the hearing, the Petitioner intimated that [REDACTED] injuries were self-inflicted during a tantrum and/or that he had developmental delays which rendered him particularly susceptible to brain injury. She also suggested that his injuries occurred prior to his arrival at her home. The Petitioner's testimony in this regard, which contradicted both the medical evidence and Ms.

██████████ testimony, was implausible and lacked credibility.² (Testimony of Ms. ██████████ Dr. Bryant, and Petitioner.)

III. 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 Department's Commissioner is authorized to order the emergency closure 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-13(c)(1);³ see O.C.G.A. § 20-1A-2 (defining statutory terms). Alternatively, where no death has occurred and imminent danger is not present, the Commissioner may order the emergency placement of monitors if he finds that the program has violated regulations "which threaten the health, safety, or welfare of children in the care of the program" and "[c]hildren are suspected of being subjected to life-threatening injury or life-threatening situations or the health or safety of a child or children is in danger." O.C.G.A. § 20-1A-13(b)(1).

² At the hearing, the Department's counsel questioned the Petitioner about an incident that occurred in 2011, when another sixteen-month-old toddler, ██████████, died unexpectedly while in the Petitioner's care. (Testimony of Petitioner.) The Court has not considered the 2011 incident as evidence of the Petitioner's responsibility for ██████████ injuries, despite the absence of an objection. However, the Petitioner's professed lack of a specific recollection of ██████████ death bore unfavorably on her credibility.

³ Prior to July 2011, the Commissioner's authority in the event of an immediate threat to the health, safety, or welfare of a child was restricted to placing a monitor at the program for up to twenty days. See O.C.G.A. § 20-1A-13(b); S.B. 185, 151st Gen. Assemb., Reg. Sess. (Ga. 2011).

3.

The Department proved, by a preponderance of the evidence, that the safety and welfare of children at the Petitioner's family day care home are in imminent danger within the meaning of O.C.G.A. § 20-1A-13(c)(1)(B). Although the investigation remains ongoing at this time, the available evidence points to the Petitioner as the perpetrator of [REDACTED] severe and life-threatening injuries.⁴ Accordingly, the Commissioner is authorized to order the emergency closure of the Petitioner's family day care home for up to twenty-one days, pursuant to O.C.G.A. § 20-1A-13(c)(1).

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 May, 2014.



KRISTIN L. MILLER
Administrative Law Judge

⁴ The Department's rules governing family day care homes prohibit, *inter alia*, physical abuse, corporal or physical punishment, and shaking, jerking, pinching, and rough handling of children by a child care provider. Ga. Comp. R. & Regs. 290-2-3-.11(3)(a).