

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

JERRY OWENS,)
)
Petitioner,)
)
vs.)
)
BRIGHT FROM THE START:)
GEORGIA DEPARTMENT OF)
EARLY CARE AND LEARNING,)
)
Respondent.)

Docket No:
OSAH-DECAL-FDCH-1628271-
119-KENNEDY



MAR 18 2016

K. Westray

Kevin Westray, Legal Assistant

INITIAL DECISION

Petitioner appealed Respondent's December 22, 2015, notice of revocation. The Court conducted an evidentiary hearing in this matter on March 3, 2016. Jerry Owens represented herself. Gregory Brown, Esq. represented Respondent. For the reasons set forth below, Respondent's decision to revoke Petitioner's license is **AFFIRMED**.

FINDINGS OF FACT

1.

Petitioner owns and operates a Family Day Care Home (FDCH) within her personal residence, which is located at 206 Merrydale Lane, in Clayton, Georgia. (Testimony of Ira Sudman, Respondent's Chief Legal Officer; Exhibits R-1, R-2).

2.

Any adult who resides at, is employed by, or provides services at a FDCH must undergo a criminal records check and receive a satisfactory determination from

Respondent. (Testimony of Sudman; Testimony of Shenetta McNair, Respondent's Complaint Unit Manager)

3.

On May 1, 2015, Respondent received a *Records Check Application for Licensed Facilities* from applicant Tiffany Owens Young, Petitioner's daughter, dated March 30, 2015. On the application, Ms. Young lists both her home and her mailing address as 206 Merrydale Lane, Clayton, Georgia. Both Ms. Young and Petitioner signed the form. Although the form indicates that Ms. Young's home address is the same as Petitioner's day care facility, Petitioner explained to Respondent that Ms. Young lived in a separate home on the same land as Petitioner's day care facility and that they simply shared a mailing address. During the processing of the application, Petitioner further explained to Respondent that Ms. Young was not typically present when children were in care, but that Ms. Young came to the home after the children in care had left the facility to ensure that her children, who reside with Petitioner, received baths.¹ Petitioner subsequently informed Respondent, on November 30, 2015, that Ms. Young had moved off of the property on or about November 25, 2015, and that before moving Ms. Young actually had a different home address for her residence on the property, that being 7 Firstmate Lane. Just a few days later, on December 1, 2015, Petitioner told Respondent that Ms. Young had not been on

¹ Darian Newman, the mother of two children in care, said she observed Tiffany Young at the day care in the mornings, but did not see her in the evenings. Tiffany Young's biological children live with Petitioner. Although Tiffany Young is not permitted to live in the facility or provide services for children in care, she is allowed to be present briefly to pick up or drop off her children. (Testimony of Sudman; Testimony of Newman)

Petitioner's property since June 2015. (Testimony of Colette Upshaw, Childcare Consultant in Respondent's Complaint Unit; Exhibits R-1, R-8).

4.

On May 1, 2015, Respondent also received a second *Records Check Application for Licensed Facilities*. On this application, which was also dated March 30, 2015, the applicant is listed as Tiffany Ramey, a prospective employee for hire. Both Ms. Ramey and Ms. Owens signed this form. The form lists Ms. Ramey's home and mailing address as 206 Merrydale Lane, Clayton, Georgia.² Ms. Ramey, at least up until December 2015, resided in a camper on property adjacent to the daycare, and shared the same mailing address as Petitioner's day care facility. (Exhibit R-2; Judicial Notice take of Final Decision issued in *Jerry T. Owens v. Georgia Dep't of Early Care and Learning, OSAH-DECAL-FDCH-1624809-119-Miller, Finding of Fact #11*)

5.

On May 7, 2015, Respondent notified Petitioner that Ms. Young and Ms. Ramey had incomplete files resulting in Respondent being unable to make a fitness determination pursuant to Georgia Code Section 20-1A-30 *et seq.*, meaning that Ms. Young and Ms. Ramey were prohibited from residing at a child care facility or providing services in a child care facility, regardless of compensation, while children are present for care. Respondent further advised Petitioner that if Ms. Young or Ms. Ramey are present at the daycare while children are being cared for prior to Respondent issuing a satisfactory determination for each respective

² On a separate form that Ms. Ramey completed on November 14, 2015, to document an incident that occurred at the day care, Ms. Ramey listed her home address as 133 Mustang Lane, Clayton, Georgia.

individual, Petitioner's license to operate a child care facility will be revoked.
(Exhibits R-3, R-4)

6.

Petitioner, on May 12, 2015, reiterated to Respondent that Ms. Young did not live at the same residence where the day care is operated. Petitioner further acknowledged that neither Ms. Young nor Ms. Ramey could work at the day care until Petitioner received notice that they had received a satisfactory records determination. (Exhibit R-8)

7.

In September 2015, Petitioner contacted Respondent to inquire whether Respondent had issued a satisfactory records determination for Ms. Ramey. On September 29, 2015, Respondent advised Petitioner that Ms. Ramey had not been issued a satisfactory records determination and that Ms. Ramey still could not work in the day care until such time that a satisfactory records determination is issued. (Exhibit R-8)

8.

On October 27, 2015, Respondent conducted a Licensing Study Visit at Petitioner's day care facility. During this visit, Respondent's representative did not see Ms. Young nor Ms. Ramey on the premises. At that time, Petitioner again reiterated to Respondent's representative that neither Ms. Young nor Ms. Ramey resided in the home where the day care is operated. (Exhibit R-8)

9.

On November 9, 2015, when Darian Newman arrived at the day care to drop off her two children around 10:00 a.m., Ms. Ramey was present at the facility. Likewise, when Ms. Newman arrived at the day care to pick up her two children around 7:00 p.m., Ms. Ramey was again present. Petitioner told Respondent that Ms. Ramey was present solely to inform Petitioner that she had submitted documentation to complete her criminal records check application. Similarly, Ms. Ramey informed Rabun County Sheriff's Office Investigator Talley (1) that she was not present at the facility all day, (2) that she was not employed by Petitioner because of her unsatisfactory records check, and (3) that she was present solely to fax documentation to Respondent in an attempt to receive a satisfactory records determination.³ However, Ms. Newman has seen Ms. Ramey present at the facility on multiple occasions assisting with the children when she has dropped off and picked up her children. (Testimony Upshaw; Testimony of Darian Newman; Exhibits R-7, R-8)

10.

On November 12 and 19, 2015, Respondent conducted two field visits. Ms. Ramey was not observed to be on the premises during either visit, and on November 19, Petitioner informed Respondent that she was no longer considering hiring Ms. Ramey. In regard to Ms. Young, on November 12, Respondent observed Ms. Young on the premises briefly when she stopped by

³ Respondent's records reflect that the agency received additional documentation from Ms. Ramey, but that the documentation was still insufficient for Respondent to make a fitness determination because it did not include a copy of an Order of Discharge nor a sentencing sheet. (Testimony of Sudman)

the day care to pick up her biological child to take him to the doctor. (Testimony of Upshaw; Exhibit R-8)

11.

On December 7, 2015, Respondent made a determination to issue an Order for Emergency Closure. A hearing was subsequently held, after which Judge Kristin Miller issued a Final Decision on December 15, 2015, affirming the emergency closure. In her decision, Judge Miller found that Petitioner had allowed individuals who have not received a satisfactory determination to reside at the same address as her day care and/or to be present in the home while children are in care. (Exhibit R-8; Jerry T. Owens v. Georgia Dep't of Early Care and Learning, OSAH-DECAL-FDCH-1624809-119-Miller, Finding of Fact #9)

12.

On December 22, 2015, Respondent issued a Notice of Revocation, which Petitioner timely appealed. The Notice of Revocation cited Petitioner for violating Ga. Comp. R. & Regs. 290-2-3-.21(1)(c) and (4)(c), which provide that a provider must ensure that no one with an unsatisfactory record check determination resides at the facility and that a provider must have sufficient evidence that every employee hired on or after January 1, 2014 has a satisfactory Fingerprint Records Check Determination on file and immediately available to the Respondent upon request. (Exhibit ALJ-1, Notice of Revocation).

13.

In the past few months, Petitioner has installed a fence around the property where the daycare is located. She has also posted a sign to notify the public that

no one is allowed on the property between the hours of 6 a.m. and 6 p.m. unless their child is enrolled in child care. Finally, Petitioner has installed a video surveillance system to ensure the safety of children in her care. (Exhibits P-1, P-4)

CONCLUSIONS OF LAW

1.

This appeal concerns Respondent's December 22, 2015, Notice of Revocation. Accordingly, the burden of proof rests on Respondent to prove that revocation is authorized and appropriate. Ga. Comp. R. & Regs. 616-1-2-.07(1)(a), (c). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2.

Respondent is the state agency responsible for regulating licensed child care centers and promulgating rules that govern Georgia facility-based child care centers. O.C.G.A. §§ 20-1A-3(d)(4). Pursuant to that responsibility, Respondent is given certain enforcement powers to ensure that centers adhere to promulgated regulations. O.C.G.A. § 20-1A-12.

3.

Every employee of any center is required to obtain either a satisfactory fingerprint records check determination or have an unsatisfactory fingerprint records check determination reversed in accordance with Code Section 20-1A-43. O.C.G.A. § 20-1A-39(b) (2015).

4.

If an employee receives an unsatisfactory records check determination, Respondent will notify the day care center. After the center receives notification of the determination, the center is required to take such steps as are necessary so that such person is no longer an employee. O.C.G.A. § 20-1A-39(b) (2015).

5.

An employee of a center does not only include individuals who are hired to work at a center for pay. Instead, Georgia law defines an “employee” of a family day care to be any person who performs any duties which involve personal contact between that person and any child being cared for at the facility, and also includes any adult person who resides at the facility or who, with or without compensation, performs duties for the center which involve personal contact between that person and any child being cared for by the center. O.C.G.A. § 20-1A-30(7).

6.

Georgia law further provides that Respondent must revoke the license of a center that fails to comply with the requirement to take such steps as are necessary so that a person with an unsatisfactory records check determination is no longer an employee. O.C.G.A. § 20-1A-39(b) (2015).

7.

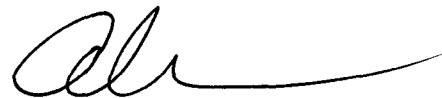
Based on a totality of the circumstances, the court concludes that Respondent did not meet its burden to prove that Ms. Young met the definition of an employee for purposes of this matter despite Ms. Young’s application indicating

that her home address was the same as the day care center's address. There is insufficient evidence that Ms. Young physically resided in the residence where the day care was operated. There also is insufficient evidence that Ms. Young performed duties at the center, with or without compensation. Respondent's representative did not observe Ms. Young on the premises except to pick up her child, and Ms. Newman did not recall seeing Ms. Young at the center except in the mornings. However, Respondent has met its burden to prove that Ms. Ramey was an employee and that she was present while children were in care. Respondent further proved that Petitioner knew Ms. Ramey had an unsatisfactory records check determination, and that she did not take necessary steps to ensure that Ms. Ramey was not present in the capacity of an employee while children were in care. Regardless of whether Petitioner paid Ms. Ramey, the court concludes that Ms. Ramey performed duties for the center which involved personal contact between herself and the children being cared for by the center on at least one occasion, if not more. O.C.G.A. § 20-1A-30(7); O.C.G.A. § 20-1A-39(b). Petitioner did not effectively rebut Respondent's evidence regarding Ms. Ramey.

DECISION

Respondent's decision to revoke Petitioner's license is **AFFIRMED**.

SO ORDERED, this 17th day of March, 2016.



Ana Kennedy
Administrative Law Judge