BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

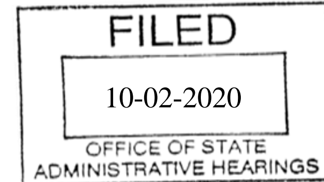
LATRONNA BUSH,
Petitioner,

v.

GEORGIA DEPARTMENT OF EARLY CARE AND LEARNING,
Respondent.

Docket No.: 2105442
2105442-OSAH-DECAL-CCLC-47-Brown

Agency Reference No.: 50391



FINAL DECISION

I. INTRODUCTION

This matter concerns Petitioner's appeal of an Order for Intended Emergency Closure of her family child care learning home, which was issued by the Georgia Department of Early Care and Learning (hereinafter "DECAL" or "Respondent") on September 28, 2020. A preliminary hearing pursuant to O.C.G.A. § 20-1A-13 was held on October 1, 2020, before the undersigned administrative law judge of the Office of State Administrative Hearings.

Petitioner represented herself at the hearing. Respondent was represented by Kori Woodward-Dickens, Esq. The following witnesses provided testimony at the hearing:

- Petitioner;
- Jennifer Jackson, Fire Safety Inspector, Albany Fire Marshal's Office;
- Officer Sara Koizumi, Albany Police Department;
- Carlton Russell, Plans Review Specialist, City of Albany;
- April Brown, Child Care Services Consultant, DECAL;
- Penny Svenson; Child Care Services Consultant, DECAL; and
- Jennifer Collins Avera, CAPS Examiner, DECAL.

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

The following facts are not in dispute:

1.

Petitioner is the owner and operator of a family child care learning located in Albany, Georgia home (hereinafter "the Home"). Petitioner is licensed by Respondent to operate the Home.

2.

Family child care learning homes such as the one owned and operated by Petitioner are permitted to care for a maximum of six children for pay, with the exception that they may care for two additional children during two designated one-hour periods with Respondent's approval. This limitation is expressed in Respondent's rules, which owners are provided and familiarized with at orientation and through required training. April Brown, a Child Care Services Consultant, also brought this limitation to Petitioner's attention during a virtual visit on July 23, 2020. (Testimony of April Brown; Testimony of Rukiyah Thomas; Respondent's Exhibit 4).

3.

The Home was also authorized to provide services to participants in the Childcare and Parent Services (CAPS) Program. Through this program, the Home could seek reimbursement from Respondent for services provided to each CAPS-eligible child in attendance. (Testimony of Jennifer Avera).

4.

Respondent commenced an investigation of the Home after it determined Petitioner repeatedly sought CAPS reimbursement for more children than the Home was licensed to care for. For example, Petitioner sought CAPS reimbursement for child care services reportedly provided to 23 children on October 8, 2019, 22 children on June 22, 2020, 35 children on August 12, 2020,

and 29 children on September 15, 2020. To ascertain whether Petitioner was indeed providing child care services to children in these numbers, Respondent dispatched Jennifer Collins Avera to investigate. (Testimony of Jennifer Avera; Respondent's Exhibit 11).

5.

Ms. Avera arrived in the area of the Home at approximately 7:00 a.m. and commenced monitoring the Home from across the street. From 7:03 to 9:14 a.m., she observed thirty children being dropped off at the Home. Concerned that the Home was operating well over its capacity, she contacted Penny Svenson, Child Care Services Consultant, for assistance. (Testimony of Jennifer Avera).

6.

Ms. Avera and Ms. Svenson enlisted the assistance of Jennifer Jackson, a Fire Safety Inspector with the Albany Fire Marshal's Office**,** Officer Sara Koizumi of the Albany Police Department, and Carlton Russell, a Plans Review Specialist with the City of Albany and licensed fire safety inspector, to conduct an immediate site visit of the Home. After knocking on the door, they were met by an adult male, later identified as Matteo McKeiver. Ms. Svenson identified herself, explained that she was there to conduct a complaint investigation, and requested entry to the Home. Mr. McKeiver did not grant investigators access to the Home, but instead appeared to stall, saying that Petitioner would return shortly. After Ms. Svenson requested entry to the Home three times without success, Officer Koizumi intervened, asking Mr. McKeiver if he was denying Respondent's investigators access to the Home. Eventually, Mr. McKeiver moved aside and allowed investigators to enter. Petitioner arrived later during the site visit. (Testimony of Jennifer Avera; Testimony of Penny Svenson; Testimony of Carlton Russell; Testimony of Officer Koizumi).

7.

The investigators stepped through the front door into the Home's living room area. Ms. Svenson immediately observed that the room was dark, and that there were four children asleep in the living room: three were on mats on the floor and a fourth infant child was in a car seat. At the hearing, Officer Koizumi testified that she twice narrowly avoided stepping on a sleeping child as she escorted investigators during the site visit. (Testimony of Penny Svenson; Testimony of Officer Koizumi).

8.

When asked how many children were being cared for in the Home, Mr. McKeiver told Ms. Svenson that only three children were being cared for at that time. However, eventually, Ms. Svenson discovered that there were in fact thirty-two (32) children in the Home: four (4) in the living room, four (4) in the "front-left" room, three (3) in the "back-left" room, seven (7) children in the office, and fourteen (14) children in the "back room," including Petitioner's twelve-year-old daughter. There were four (4) infants, six (6) one-year olds, two (2) two-year-olds, five (5) three-year-olds, seven (7) four-year-olds, five (5) five-year-olds, one (1) seven-year-old, one (1) ten-year-old, and one (1) twelve-year-old. (Testimony of Penny Svenson).

9.

At the time investigators arrived at the Home, only Mr. McKeiver and Petitioner's 17-year-old son[1] were available to supervise the children. Four children—three toddlers and one school-age child—were left unsupervised behind closed doors in the front-left room. Similarly, four other children—three infants and a toddler—were left without adult supervision behind closed doors in the back-left room. Petitioner's twelve-year-old daughter was left alone with thirteen children

[1] According to Ms. Svenson, Petitioner's son did not appear to provide continuous supervision in the Home, and repeatedly left the Home during the site visit. (Testimony of Penny Svenson).

ranging from toddler to school age. Per Respondent's rules, four employees or provisional employees who were at least sixteen (16) years of age should have been present to supervise the children. (Testimony of Penny Svenson; Respondent's Exhibits 3 and 4).

10.

Not only did the number of children and lack of sufficient personnel in the Home violate capacity limitations and ratio requirements, but it posed a serious safety hazard. In the event of a fire or other emergency, caregivers would not be able to quickly evacuate the children from the Home, especially since many of the children were too young to walk. The Home's written plan for handling emergencies was woefully inadequate to address a scenario that involved so many children in care. (Testimony of Penny Svenson; Testimony of Jennifer Jackson; Testimony of Carlton Russell).

11.

Petitioner did not maintain attendance records or sign-in/sign-out (SI/SO) sheets for children in the Home's care, and admitted as much to investigators. When parents came to pick up their children during the site visit, Ms. Svenson did not observe Petitioner obtain parents' signatures on SI/SO sheets. Petitioner failed to maintain attendance records and SI/SO sheets despite the fact that April Brown, a Child Care Services Consultant, had advised Petitioner of the importance of keeping such records during a virtual visit in July 2020 and provided her with sample forms in a follow-up email. (Testimony of Penny Svenson; Testimony of April Brown).

12.

Two infants, including the one observed in the living room upon entry to the Home, had been left in car seats, with blankets draped over them. One infant was observed with a blanket covering his nose and mouth area. Although Petitioner averred that the children were in car seats

because they were waiting to be picked up by their parents, Ms. Svenson did not observe the parents arrive to pick up the children during the three-hour site visit. Indeed, Ms. Avera observed that one child remained in its car seat for the duration of the site visit. Another child was in a bouncy seat, but had not been buckled in. Overall, Ms. Svenson observed four (4) infants and eight (8) toddlers in highchairs, bouncy seats, car seats, or swings. Many of the children had fallen asleep in such equipment. As Ms. Svenson explained at the hearing, children should only sleep in safety-approved cribs or other equipment approved for infant sleep to avoid serious threats to their health, including asphyxiation. (Testimony of Penny Svenson).

13.

In one room, three cans of air freshener were placed in a basket on a shelf that was in reach of the children, who had been left unsupervised. Bags and backpacks that could potentially contain hazardous materials were not stored properly. Ms. Svenson also observed children napping next to hanging cords plugged into an active power strip with outlets exposed. (Testimony of Penny Svenson; Respondent's Exhibit 7).

14.

Although Petitioner identified Mr. McKeiver and her son as employees, she did not maintain personnel files for them as required by Respondent. Further, neither Mr. McKeiver nor Petitioner's son had completed a health and safety orientation training within the first 90 days of their employment. (Testimony of Penny Svenson; Respondent's Exhibit 3).

15.

During the site visit, Ms. Svenson conducted interviews with Petitioner, her son, and Mr. McKeiver. Petitioner indicated to Ms. Svenson that she felt she was not violating limitations as to capacity because she had obtained a certificate of occupancy from the City of Albany authorizing

her to have up to thirty-five children in care. Although Petitioner did obtain this certificate of occupancy from the City of Albany, she did not contact Respondent regarding the number of children she was authorized to care for pursuant to her license or seek licensure as a Child Care Learning Center. (Testimony of Penny Svenson; Respondent's Exhibit 3).

16.

During his interview with Ms. Svenson, Mr. McKeiver indicated that the Home typically cared for between 15 and 30 children each day. Petitioner's son reported that he typically helped provide care for 20 children at the Home. (Testimony of Penny Svenson; Respondent's Exhibit 3).

17.

After the site visit, Ms. Svenson contacted parents who received childcare services from Petitioner. None were aware that the Home had been providing care to children in excess of authorized capacity. (Testimony of Penny Svenson; Respondent's Exhibit 3).

18.

At the hearing, Petitioner acknowledged that investigators' reports regarding what they observed at the Home during the site visit were accurate. She explained that she has been experiencing hardship and testified that she "did what she had to do." She also admitted that she had overbilled, based on the number of children she was licensed to care for in her home. However, she asked that her Home not be closed, pointing out that none of the children involved had been harmed. She testified that, as she was a mother and had held a license since 2013, she was capable of continuing to work with Respondent and providing child care services in the Home. (Testimony of Petitioner).

III. CONCLUSIONS OF LAW

1.

Respondent 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.

Respondent is authorized to issue an emergency closure order 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-2 (definitions of "Commissioner" and "Department"), 20-1A-13(c)(1).

3.

Petitioner has failed to comply with Respondent's rules as follows:

(1) The Home failed to adhere to limitations on the number of children to whom it could provide care in violation of Rule 290-2-3-.04(1)(d);

(2) The Home failed to allow Respondent's personnel access to the premises and failed to cooperate with an inspection or investigation in violation of Rule 290-2-3-.05(b);

(3) The Home failed to ensure that a staff person with a satisfactory Comprehensive Records Check Determination supervised children at all times in violation of Rule 290-2-3-.07(17);

(4) The Home failed to ensure that a sufficient number of staff members were present to assist with supervision in violation of Rule 290-2-3-.07(18);

(5) The Home's staff members made false and/or misleading statements to Respondent in connection with an investigation or inspection in violation of Rule 290-2-3-.05(c); specifically, Mr. McKeiver stated to Ms. Svenson that three children were in care when in fact there were thirty-two;

(6) The Home allowed children to spend more than a consecutive half-hour in

confining equipment, such as highchairs, car seats, and bouncy seats in violation of Rule 290-2-3-.09(5);

(7) The Home allowed children to sleep in inappropriate equipment, including car seats, highchairs, and bouncy seats in violation of Rule 290-2-3-.19(2)(c), which requires that children sleep only in safety approved equipment;

(8) The Home failed to maintain SI/SO sheets or attendance records in violation of Rule 290-2-3-.08(9);

(9) The Home failed to secure hazardous materials in locked areas or otherwise render them inaccessible to children in violation of Rule 290-2-3-.11(2)(f);

(10) The Home failed to ensure that its staff members had received health and safety orientation training in violation of Rule 290-2-3-.07(7); and

(11) The Home failed to maintain personnel files for its staff members in violation of Rule 290-2-3-.07(4).[2]

4.

Respondent proved, by a preponderance of the evidence, that the Home's continued operation poses an imminent danger to the safety and welfare of children within the meaning of O.C.G.A. § 20-1A-13(c)(1)(B). From the record, it is clear that Petitioner recklessly exceeded the number of children the Home was capable of safely caring for. Consequently, children were left unsupervised and placed at risk of serious harm, whether from day-to-day hazards or those presented by an emergency, such as fire. Further, Petitioner disregarded rules designed to ensure children's safety, such as those regarding safe sleep and hazardous chemicals. Moreover, the investigators' observations during the site visit, which were not disputed by Petitioner, describe an alarming pattern of gross inattentiveness in the Home that could easily result in harm to a child if left unchecked. Therefore, the Court concludes that the emergency closure is warranted.

[2] As the Home had an emergency plan, albeit one that was outdated and inadequate, the Court does not find that Petitioner violated the express prohibitions of Rule 290-2-3-.11(2)(a). However, this does not affect the Court's overall conclusion that emergency closure is warranted.

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 _2nd_ day of October, 2020.

Barbara A. Brown
Administrative Law Judge

NOTICE OF FINAL DECISION

Attached is the Final Decision of the administrative law judge. The Final Decision is not subject to review by the referring agency. O.C.G.A. § 50-13-41. A party who disagrees with the Final Decision may file a motion with the administrative law judge and/or a petition for judicial review in the appropriate court.

Filing a Motion with the Administrative Law Judge

A party who wishes to file a motion to vacate a default, a motion for reconsideration, or a motion for rehearing must do so within 10 days of the entry of the Final Decision. Ga. Comp. R. & Regs. 616-1-2-.28, -.30(4). All motions must be made in writing and filed with the judge's assistant, with copies served simultaneously upon all parties of record. Ga. Comp. R. & Regs. 616-1-2-.04, -.11, -.16. The judge's assistant is Kevin Westray - 404-656-3508; Email: kwestray@osah.ga.gov; Fax: 404-656-3508; 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303.

Filing a Petition for Judicial Review

A party who seeks judicial review must file a petition in the appropriate court within 30 days after service of the Final Decision. O.C.G.A. §§ 50-13-19(b), -20.1. Copies of the petition for judicial review must be served simultaneously upon the referring agency and all parties of record. O.C.G.A. § 50-13-19(b). A copy of the petition must also be filed with the OSAH Clerk at 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303. Ga. Comp. R. & Regs. 616-1-2-.39.

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