

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Linda Miranda, :  
Petitioner :  
 : No. 107 C.D. 2010  
v. :  
 : Submitted: July 30, 2010  
Department of Public Welfare, :  
Respondent :

BEFORE: HONORABLE DAN PELLEGRINI, Judge  
HONORABLE PATRICIA A. McCULLOUGH, Judge  
HONORABLE JOHNNY J. BUTLER, Judge

**OPINION NOT REPORTED**

MEMORANDUM OPINION  
BY JUDGE McCULLOUGH

FILED: December 22, 2010

Linda Miranda (Petitioner) petitions for review of the December 28, 2009, final order of the Department of Public Welfare (DPW), upholding the August 11, 2009, order of the Bureau of Hearings and Appeals (BHA), which adopted an administrative law judge's (ALJ) recommendation to revoke Petitioner's certificate of registration to operate a family day care home.<sup>1</sup> We affirm.

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<sup>1</sup> We note that Petitioner's reproduced record does not include the lower case "a" following the page numbers as required by Pa. R.A.P. 2173 and that her brief does not conform in all respects with the rules of appellate procedure governing the content of briefs. However, the defects in Petitioner's brief are not so substantial as to preclude effective judicial review.

On December 15, 2004, Petitioner applied for and subsequently received a registration certificate from DPW to operate a family child day care home<sup>2</sup> on property she owns with her husband, which is located in Gettysburg, Pennsylvania. (ALJ's Finding of Fact No. 2.) The property consists of three buildings that share the same address, including the family day care home, Petitioner's residence, and her husband's retail business. (ALJ's Finding of Fact No. 3.) Although Petitioner typically provides day care services from the family day care home, she operated the day care from the family residence for approximately three months while the day care's heating system was being repaired.

On May 29, 2001, Adams County Children & Youth Services filed an indicated report of child abuse naming Petitioner's husband as the perpetrator. (ALJ's Finding of Fact No. 1.) When Petitioner submitted her application for a registration certificate and her subsequent application for renewal of the registration certificate, she stated that no one named as a perpetrator in an indicated report would be present at the day care while children were in care. (ALJ's Findings of Fact, Nos. 4, 6-7.)

On November 9, 2007, DPW investigated a complaint that a child was injured while in Petitioner's care and issued two licensing inspection summaries. The first summary listed the following five regulatory violations: (1) visible hazards on the floors and walls of the day care in violation of 55 Pa. Code §3290.74; (2) failure to maintain emergency contact information for four of nine enrolled children in violation of 55 Pa. Code §3290.124(a); (3) inappropriate confinement of children to a

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<sup>2</sup> A family child day care home is defined as “[a] home other than the child’s own home, operated for profit or not-for-profit, in which child day care is provided at any one time to four, five or six children unrelated to the operator.” 55 Pa. Code §3290.4.

low feeding chair, a playpen, and timeout during an inspection in violation of 55 Pa. Code §3290.111(c); (4) inadequate supervision resulting in the injury of a child in violation of 55 Pa. Code §3290.113(a); and (5) toxic substances situated near food and accessible to children in violation of 55 Pa. Code §3290.64. The second licensing inspection summary listed the following six items of non-compliance: (1) inadequate supervision during an inspection in violation of 55 Pa. Code §3290.32(a); (2) the presence of a perpetrator in an indicated report of child abuse in violation of 55 Pa. Code §3290.12(d)(5); (3) small toys, objects, and a plastic bag accessible to children who place items in their mouths in violation of 55 Pa. Code §3290.103; (4) a high chair without a t-strap in violation of 55 Pa. Code §3290.104; (5) inappropriate rest equipment in violation of 55 Pa. Code §3290.104; and (6) play equipment that was not clean or in good repair in violation of 55 Pa. Code §3290.102(a). DPW conducted another inspection on December 10, 2007, and issued an inspection summary, which cited Petitioner for caring for more than five infants and toddlers simultaneously in violation of 55 Pa. Code §3290.52.

By letter dated February 22, 2008, DPW informed Petitioner of its preliminary decision to revoke her registration certificate. (ALJ's Finding of Fact No. 26.) In addition to citing the regulatory violations listed in the inspection summaries, DPW concluded that Petitioner committed fraud or deceit in the self-certification process in violation of section 1709(b)(2) of the Public Welfare Code (Code), 62 P.S. §1079(b)(2),<sup>3</sup> and 55 Pa. Code §3290(c)(1).

Petitioner appealed, and a hearing was held before the ALJ. DPW presented exhibits and the testimony of two DPW certification representatives,

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<sup>3</sup> Act of June 13, 1967, P.L. 31, as amended, 62 P.S. §§101-1503.

Bonnie Cox and Brenda Moore. Cox testified that she observed Petitioner's husband present in the living room of the day care during the November 9, 2006, and December 10, 2006, inspections. (Reproduced Record (R.R.) at 46, 51.) Moore testified that she inspected Petitioner's day care in February of 2006, following a complaint that Petitioner was caring for children in an unsafe storage shed, but found that Petitioner had been operating the day care in the family residence since December of 2005 while the day care's heating system was being repaired. (R.R. at 55.) The ALJ determined that the testimony of Cox and Moore was credible. (ALJ's Finding of Fact No. 28.)

Petitioner testified that her husband cleans and maintains the day care after hours, but is not present while children are in care and, therefore, she answered truthfully when she responded that a perpetrator in an indicated report would not be present while children were in care. (R.R. at 57.) Petitioner did acknowledge that her husband checks in on her from time to time when he observes a strange vehicle on the property. (R.R. at 57.) The ALJ determined that Petitioner's testimony was not credible. (ALJ's Finding of Fact No. 29.)

Based on the testimony and evidence presented, the ALJ found that Petitioner committed ten of the twelve regulatory violations<sup>4</sup> listed in the inspection summaries. The ALJ emphasized that Petitioner's husband was present in the day care while children were in care in violation of 55 Pa. Code §3290.12(d)(5). The ALJ also found that Petitioner committed fraud or deceit by failing to disclose the

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<sup>4</sup> The ALJ determined that the inspections diverted Petitioner's attention from the children and that DPW, therefore, did not prove that children were inappropriately confined in violation of 55 Pa. Code §3290.11(c) or that children were inadequately supervised in violation of 55 Pa. Code §3290.12(d)(5). (Reproduced Record (R.R.) at 11-12.)

presence of a perpetrator named in an indicated report when she applied for and renewed her certificate of registration in violation of section 1079(b)(2) of the Code, 63 P.S. §1079(b)(2), and 55 Pa. Code §3290.12(c)(2). On August 11, 2009, the BHA adopted the ALJ's recommendation in its entirety. Petitioner filed an application for reconsideration, which the DPW granted. On December 28, 2009, DPW issued its final decision affirming the decision of the BHA.

On appeal to our Court,<sup>5</sup> Petitioner asserts that DPW erred in adopting the ALJ's determination that a perpetrator named in an indicated report was present in the day care while children were in care. Specifically, Petitioner avers that her husband did not have any meaningful contact with the children and that his brief appearances at the day care did not constitute the type of harm that the regulations seek to prevent.

The regulation at 55 Pa. Code §3290.12(d)(5) (emphasis added) provides that DPW may revoke a registration certificate if an “operator, staff person, volunteer or *other person present at the day care while children are in care*” is a person named as a perpetrator in an indicated report of child abuse. This provision does not prohibit a named perpetrator from having “meaningful contact” with children but instead regulates the mere presence of a perpetrator named in an indicated report at a day care while children are in care.

Here, Petitioner does not dispute that her husband was named as the perpetrator in an indicated report of child abuse filed by Adams County Children & Youth Services on May 19, 2001. Cox credibly testified that she observed

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<sup>5</sup> Our scope of review is limited to determining whether an error of law was committed, whether constitutional rights were violated or whether necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

Petitioner's husband in the living room of the day care on two occasions, and the ALJ found this to be convincing evidence that Petitioner's husband frequently entered the day care while children were present.<sup>6</sup> Moreover, the ALJ reasonably inferred that Petitioner's husband was present while children were in care based on Ms. Moore's testimony that Petitioner operated the day care out of the family residence from December of 2005 through February of 2006. Accordingly, DPW did not err in concluding that a perpetrator named in an indicated report of child abuse was present at the day care while children were in care in violation of 55 Pa. Code §3290.12(c)(2).

Next, Petitioner asserts that DPW erred in concluding that she committed fraud when applying for and renewing her certificate of registration in violation of section 1079(b)(2) of the Code, 62 P.S. §1079(b)(2), and 55 Pa. Code §3290.12(c)(2). As our Court has observed, "fraud consists of anything calculated to deceive, whether by a single act or combination, or by suppression of truth, or a suggestion of what is false, whether it be by direct falsehood or innuendo, by speech or silence, word of mouth, or look or gesture, and it is any artifice by which a person is deceived to his disadvantage." Integrated Behavioral Health Services v. Department of Public Welfare, 871 A.2d 296, 300 (Pa. Cmwlth. 2005). In order to revoke a certificate of registration for fraud in the self-certification process, DPW has the burden to demonstrate that an applicant provided false information, with the intent to induce licensure, which DPW relied on. Id.

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<sup>6</sup> It is well settled that determinations of witness credibility and evidentiary weight are committed to the discretion of the fact-finder. Clites Guest Home v. Department of Public Welfare, 548 A.2d 1345 (Pa. Cmwlth. 1988).

Here, Petitioner stated that no one named as a perpetrator in an indicated report of child abuse would be present while children were in care when she applied for and renewed her certificate of registration. Although Petitioner's husband was found at the day care on at least two occasions, his presence alone does not demonstrate that Petitioner intended to deceive DPW. Thus, we conclude that DPW did not meet its burden to demonstrate that Petitioner intended to commit fraud or deceit when applying for and renewing her certificate of registration.

However, whether or not DPW proved fraud or deceit is not dispositive here, because the ALJ found that Petitioner committed ten of the twelve regulatory violations listed in the inspection summaries. With the exception of the presence of her husband in the day care, Petitioner does not dispute these violations; instead, she argues that they are easily correctible and, therefore, do not warrant the revocation of her license. However, it is well-settled that even one regulatory violation is sufficient to revoke a certificate to operate a family day care home. Altagracia De Pena Family Day Care v. Department of Public Welfare, 943 A.2d 353 (Pa. Cmwlth. 2007). Thus, Petitioner's argument that the nine remaining regulatory violations do not warrant the revocation of her certificate of registration is without merit; any one of the regulatory violations was sufficient grounds for the revocation of Petitioner's certificate of registration.

Accordingly, we affirm the decision of DPW to revoke Petitioner's certificate to operate a family day care home.

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PATRICIA A. McCULLOUGH, Judge

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Respondent	:	

**ORDER**

AND NOW, this 22nd day of December, 2010, the final order of the Department of Public Welfare, dated December 28, 2009, is hereby affirmed.

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PATRICIA A. McCULLOUGH, Judge