

STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES

In the matter of

Docket No. 2003-688

**Gloria Turcott,
Petitioner**

Agency No. DG 240092301

v

**Agency: Bureau of Family
Services**

**Bureau of Family Services,
Respondent**

**Case Type: Intent to Deny
Refusal to Renew**

_____ /

**Issued and entered
this 15th day of September, 2003
by
Robert W. Swanson, Deputy Director
Department of Consumer and Industry Services**

FINAL ORDER

On July 31, 2003, the Administrative Law Judge (ALJ) issued and entered a Proposal for Decision (PFD) in the above entitled matter. No Exceptions were filed. Furthermore, no Responses were filed.

This matter commenced with the Respondent's decision to issue a Notice of Intent to Refuse to Renew Petitioner's license to operate a group day care home. A properly noticed hearing was held on July 17, 2003. Carol Shuck appeared on behalf of the Respondent. The Petitioner appeared on her own behalf.

The Respondent intends to deny Petitioner's license renewal based upon

allegations that Petitioner failed to meet the requirements of the Child Care Organizations Act, 1973 PA 116, as amended, being MCL 722.111 *et seq.* (Act).

Initially, the Respondent contends that the Petitioner violated 1989 AACRS, R 400.1802(6) which provides:

The day-care home family shall be of good moral character and be suitable to assure the welfare of children.

The ALJ found that the Petitioner's spouse pled guilty to the misdemeanor of maintaining a drug house. This action was based upon the discovery of marijuana on the premises of Petitioner's residence, which was also the day care home. The ALJ held that the Petitioner lacks good moral character and that Respondent had established that the Petitioner willfully and substantially violated R 400.1802(6). I concur.

The Respondent also contends that the decision to not renew is sanctioned in Section 11(2) of the Act which provides:

The department may deny, revoke, or refuse to renew a license or certificate of registration of a child care organization which the licensee, registrant, or applicant . . . willfully and substantially violates this act, the rules promulgated under this act, or the terms of the license or certificate of registration.

The ALJ held that the Petitioner's conduct and the misdemeanor conviction violated Section 11(2). I again concur.

The undersigned being fully advised in the premises;

ORDER

NOW THEREFORE, IT IS ORDERED that:

1. The ALJ's Proposal for Decision is adopted by reference and made a part of this Final Order.
2. The actions of the Bureau of Family Services in this matter are AFFIRMED.
3. The Petitioner's application for license renewal is DENIED.

**Robert W. Swanson, Deputy Director
Department of Consumer and Industry Services**

**STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
BUREAU OF HEARINGS**

In the matter of

Docket No. 2003-688

**Gloria Turcott,
Petitioner**

Agency No. DG 240092301

**v
Bureau of Family Services,
Respondent**

**Agency: Bureau of Family
Services**

**Case Type: Intent to Deny
Refusal to Renew**

**Issued and entered
this 31st day of July, 2003
by James L. Karpen
Administrative Law Judge**

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

Appearances: Petitioner, Gloria Turcott, appeared *pro se*. Carol Shuck appeared on behalf of Respondent, Bureau of Family Services.

The charging document in this case is a Notice of Intent to Deny Application for Certification of Registration (Notice), dated February 5, 2003. The Notice discloses that Petitioner Gloria Turcott, on March 26, 2000, was issued a license to operate a group day care home pursuant to the "Child Care Organization Act," 1973 PA 116, as amended, MCL 722.111 *et seq.* (Act). The Notice alleges that police searched the day care premises on September 21, 2001 and discovered marijuana. The Notice alleges that two day care children were present at the time of the search. The Notice discloses that household member #1 (Petitioner's spouse), on June 20, 2002, pled guilty to the misdemeanor of maintaining a

drug house. Petitioner's spouse was sentenced to 24-months probation, a \$300 fine and one month in jail with one day served and 29 days held in abeyance. The Notice further avers that Petitioner failed to cooperate with the investigation of the foregoing.

Based on the allegations noted above, the Notice asserts in Count I that Petitioner's family lacks good moral character and that the day care home is unsuitable to assure the welfare of children, contrary to 1989 AACS, R 400.1802(6). Count II of the Notice alleges a violation of Section 11(2) of the Act. Section 11(2) of the Act permits licensing sanctions based upon wilful and substantial violations of the Act, rules or terms of a license. It does not independently establish standards governing licensees.

The hearing was held as scheduled on July 17, 2003.

ISSUES AND APPLICABLE LAW

Section 11(2) of the Act allows the Department to deny an application for a certificate of registration to operate a family day care home if the licensee, *inter alia*, wilfully and substantially violates the terms of the Act or rules promulgated under the Act.

Willful and substantial non-compliance have been defined in 1999 AACS, R 400.16001, as follows:

Rule 1. (1) As used in these rules:

(a) "Act" means Act No. 116 of the Public Acts of 1973, as amended, being §722.111 *et seq.* of the Michigan Compiled Laws.

(b) "Act No. 218" means Act No. 218 of the Public Acts of 1979, as amended, being §400.701 *et seq.* of the Michigan Compiled Laws.

(c) "Noncompliance" means a violation of the act or act 218, an administrative rule promulgated under the act or act 218, or the

terms of a license or a certificate of registration.

(d) "Substantial noncompliance" means repeated violations of the act or act 218 or an administrative rule promulgated under the act or act 218, or the terms of a license or a certificate or registration, that jeopardizes the health, safety, care, treatment, maintenance, or supervision of individuals receiving services or, in the case of an applicant, individuals who may receive services.

(e) "Willful noncompliance" means, after receiving a copy of the act or act 218, the rules promulgated under the act or act 218 and, for a license, a copy of the terms of a license or a certificate of registration, an applicant or licensee knew or had reason to know that his or her conduct is a violation of the act or act 218, rules promulgated under the act or act 218, or the terms of a license or a certificate of registration.

(2) Except as provided in subrule (1) of this rule, a term defined in Act No. 306 of the Public Acts of 1969, as amended, being §§24.201 *et seq.* of the Michigan Compiled Laws, shall have the same meaning when used in these rules.

(3) The definitions in this rule apply to matters under the act and act 218 for contested case hearings.

The rule at issue in this case, Rule 400.1802(6), provides:

Rule 400.1802(6)

* * *

(6) The day-care home family shall be of good moral character and be suitable to assure the welfare of children.

Good moral character is defined in MCL 338.41(1); as follows:

Sec. 1. (1) The phrase "good moral character", or words of similar import, when used as a requirement for an occupational or professional license or when used as a requirement to establish or operate an organization or facility regulated by this state in the Michigan Compiled Laws or administrative rules promulgated under those laws shall be construed to mean the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner.

SUMMARY OF THE EVIDENCE

At the commencement of the hearing, Respondent introduced six exhibits.

Exhibit 2 is a March 4, 2002 letter from Petitioner to licensing consultant Marie Walker, in

which Petitioner states that her husband is not on the daycare premises when children are in care. Exhibit 4 is a Licensing Record Clearance Request form which discloses Michael Turcott's conviction for maintaining a drug house. Exhibit 5 is the Judgement of Sentence form which shows that on May 6, 2002, Mr. Turcott pled guilty to the aforementioned misdemeanor and that he was sentenced on June 6, 2002. Exhibit 6 is an April 21, 2003 letter from Petitioner in which she agrees to drug testing. Exhibit 8 is a May 30, 2003 letter from Petitioner in which she requests a hearing. Exhibit 9 is Petitioner's Child Day Care Renewal Application dated August 20, 2002, which discloses the criminal conviction of Petitioner's spouse.

The first witness to testify at the hearing was Marie Walker, who is employed by Respondent as a child day care licensing consultant and who investigated the present case. Ms. Walker testified that on September 21, 2001, she received a complaint from the local Family Independence Agency office concerning the police search of Petitioner's home. On September 26, 2001, Ms. Walker spoke with Petitioner, who admitted that the police found marijuana in her home. On May 6, 2002, Petitioner informed Ms. Walker of her husband's conviction. Ms. Walker noted that Petitioner's license expired in September 2002.

Petitioner, the only other witness to testify, admitted her husband's conviction. Petitioner said it was too expensive to continue her husband's drug testing beyond his two-year probationary period and that he could not be off the day care premises when children were in care because he conducts a business out of the family home. Both of the foregoing requirements were proposed as part of a corrective action plan following Ms. Turcott's

criminal conviction.

Before turning to the Findings of Fact, a couple of matters warrant comment. First, no evidence was presented concerning the search of Petitioner's premises and whether day care children were present. Nor was there any evidence that Petitioner failed to cooperate with the investigation. Second, whether or not Petitioner is cooperative; it is undisputed that Petitioner's spouse was convicted of maintaining a drug house. It is evident that Petitioner knew that the facts supporting the conviction and the conviction itself makes her premises unsuitable to assure the welfare of children. Moreover, these same underlying facts jeopardize the health and safety of children in Petitioner's care.

FINDINGS OF FACT

Based upon the entire record, as discussed above, I make the following findings of fact.

1. Petitioner, Gloria Turcott, is licensed under the Act to operate a group day care home with a capacity of twelve.
2. On May 6, 2002, Petitioner's spouse, Michael Turcott, pled guilty to the misdemeanor of maintaining a drug house.
3. Mr. Turcott's conviction was based upon the discovery of marijuana on the premises of Petitioner's residence, which was also the day care home.
4. On May 6, 2002, Petitioner disclosed her husband's conviction to Respondent's licensing consultant.
5. Petitioner's husband operates a business at the family residence and

thus, must periodically be on the premises when children are in care.

6. On August 20, 2002, Petitioner submitted an application for renewal of her license, which expired in September 2002.

7. On February 5, 2002, Respondent issued a Notice that it intended to refuse to renew Petitioner's license for lack of good moral character and lack of suitability to assure the welfare of children.

8. Respondent has proven by a preponderance of the evidence that Petitioner's day care home family lacks good moral character and is unsuitable to assure the welfare of children in care.

CONCLUSIONS OF LAW

As the factual findings indicate, Respondent has proven that Petitioner currently lacks "good moral character" as that phrase is defined in MCL 338.41(1) and contrary to Rule 400.1802(6). Petitioner's violation of the foregoing rule constitutes substantial noncompliance because to issue her a license after her husband's recent misconduct would jeopardize the health and safety of children in her care. Petitioner's rule violation also constitutes willful noncompliance since she certainly had reason to know that a conviction for maintaining a drug house would constitute a violation of the Act and rules promulgated under the Act. Thus, the underlying conduct and subsequent misdemeanor conviction which violates Rule 400.1802(6) also constitutes a violation of Section 11(2) of the Act.

RECOMMENDATIONS

Based upon the Findings of Fact and Conclusions of Law, I recommend that Petitioner's renewal application to operate a group day care home be denied.

EXCEPTIONS

The parties may file Exceptions to this Proposal for Decision within fifteen (15) days after it is issued and entered. An opposing party may file a response within five (5) days after Exceptions are filed. Any such Exceptions shall be filed with the undersigned Administrative Law Judge at the Bureau of Hearings, Ottawa State Office Building, 2nd Floor, 611 West Ottawa Street, Lansing, Michigan 48909.

James L. Karpen
Administrative Law Judge