

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Wendelyn Curran,
Petitioner

v.

Docket No. OC-24-0351

Department of Early Education & Care,
Respondent

Appearance for Petitioner:

Wendelyn Curran, *pro se*

Appearance for Respondent:

Ryan Foreman, Esq.
Assistant General Counsel
The Department of Early Education and Care
50 Milk Street, 14th Floor
Boston MA 02109-5002

Administrative Magistrate:

Melinda E. Troy, Esq.

SUMMARY OF RECOMMENDED DECISION

The Petitioner applied to the Department of Early Education and Care (“EEC”) for a license to open a family childcare program. The EEC conducted a background check and learned that the Petitioner was the subject of a G.L. c. 119, § 51B, report containing “supported” allegations of abuse in 2001. The EEC concluded that the Petitioner is not a “suitable” family childcare candidate. I recommend that the EEC’s final agency decision affirm that decision because the 2001 allegations directly related to the Petitioner’s treatment of a child in her care. The Petitioner has not presented “clear and convincing evidence demonstrating [her] suitability ... in light of the concern for children’s safety.” 606 CMR 14.12(e).

RECOMMENDED DECISION

Wendelyn Curran appeals a determination by the Department of Early Education and Care (“EEC”) that she is not a “suitable”¹ “family childcare candidate.” Ms. Curran submitted a notice of claim and requested an adjudicatory hearing concerning the EEC’s determination. The matter was referred to the Division of Administrative Law Appeals (“DALA”).

I held an in-person hearing on September 5, 2024. The hearing was recorded. I admitted Exhibits 1-9 into evidence. A list of these exhibits is included as an addendum at the end of this decision.

Edward Riggs, an EEC Background Record Check Unit specialist, testified on behalf of the EEC. Ms. Curran testified on her own behalf. Both parties submitted written closing memoranda, after which the record closed.

FINDINGS OF FACT

Based on the evidence presented by the parties, along with reasonable inferences drawn therefrom, I make the following findings of fact:

1. Wendelyn Curran (Ms. Curran”) is not currently employed. Over the past several years, she worked as a nanny for a family with young children. That job ended when the youngest child entered kindergarten. Before that, she worked as a substitute teacher and teacher’s aide in various classrooms. She enjoyed that work and was successful at it.² (Testimony, Curran;

¹ A “final suitability determination” is “a conclusion that a candidate is ‘suitable’ or ‘not suitable’ after completing all mandatory components of the EEC’s Background Record Check process.” A “childcare candidate” “includes all candidates who operate...a [childcare] program...”

² Some documents in the record suggest that Ms. Curran previously held a license to provide family childcare in the 1990s but that she surrendered that license. Family childcare licenses are only valid for 3 years, unless revoked, suspended, or made probationary. 606 CMR 7.03(5)(b). Even if Ms. Curran had previously been licensed, that license would no longer be

Exhibits 6-8.)

2. In or around 2001, Ms. Curran was separated from her now-former husband. At that time, she had two children.³ Her separation and divorce were acrimonious and for a time, the divorce negatively impacted her relationship with her children. (Testimony, Curran.)
3. On June 4, 2001, the Department of Children and Families (“DCF”)⁴ received a report alleging that Ms. Curran had hit Child 1. The incident is described in a “Commonwealth of Massachusetts Department of Social Services Child Abuse/Neglect Investigation” report that states, in relevant part, that Ms. Curran admitted to “getting physical” with Child 1⁵, stating, “It’s me who hits first. I have a hitting problem.” (Exhibit 2.)
4. The report describes an interview with Child 1, in which Child 1 stated that Ms. Curran, “hits [Child 1] a lot and sometimes for no reason.”⁶ Child 1 reported being hit by Ms. Curran “often” and that some kind of altercation occurred, “pretty much every day.” *Id.*

valid and her license status in the 1990s has no bearing on her 2024 application. I make no findings related to Ms. Curran’s possible prior licensure.

³ Though the children are no longer minors, this decision will refer to them as Child 1 and Child 2.

⁴ At the time, the agency was known as the Department of Social Services, and documents in the record refer to it in that manner.

⁵ The language used in this report suggests that Ms. Curran may have struck Child 1 on more than one occasion. The EEC discretionary review report found that she had done so on “at least one occasion.”

⁶ This report contains other allegations against Ms. Curran related to her relationship with and treatment of her former spouse. Mr. Riggs credibly testified that the EEC’s determination was only based upon Ms. Curran’s treatment of Child 1, because those allegations had a direct bearing on how Ms. Curran treated children in her care and were the allegations relevant to his review. He testified that he neither considered nor relied upon any of the allegations made in the DCF report related to other individuals referenced when he found Ms. Curran to be an unsuitable candidate for licensure as a family childcare provider. I credit his testimony in that regard. Similarly here, I review the EEC’s determination only in light of the allegations made about Child 1, not the other unproven allegations in the DCF report.

5. Ms. Curran's mother corroborated that Ms. Curran and Child 1 would sometimes get into physical altercations, stating that Ms. Curran hit Child 1 first and that the mother was afraid that Ms. Curran and Child 1 were "going to hurt each other." *Id.*
6. When Child 2 was interviewed by a DCF Social Worker, Child 2 also corroborated that Ms. Curran struck Child 1. *Id.*
7. The police officer who responded to the initial report of abuse also corroborated it based on the interviews he conducted with Child 1, Child 2, and another party. *Id.*
8. Ultimately, DCF issued a "supported" finding of abuse of Child 1 against Ms. Curran. The finding reads, in relevant part,

There is clear disclosure and corroboration of [Ms. Curran] consistently hitting [Child 1] causing her injury on at least one occasion...[Ms. Curran] intentionally strikes [Child 1]. Although she claims her hitting is for discipline reasons it appears that she does this impulsively and with little control...This SW believes [Child 1] should reside with [Child 1's other parent] as the primary caretaker until mother develops some insight into the physical and emotional impact her behavior has on [Child 1].... *Id.*

9. In or around April 2024, Ms. Curran applied to the EEC for a family childcare license, seeking to provide childcare services out of her own home. (Exhibit 1.)
10. In accordance with its regulations, the EEC conducted a Background Record Check ("BRC") on Ms. Curran. A BRC is a review of certain information, including, but not limited to, (if applicable) the individual's history of involvement with the DCF, which is a separate Commonwealth agency that is authorized to investigate reports of child abuse and neglect.
11. As a result of Ms. Curran's background check, the EEC learned that the DCF had issued a 51B report supporting allegations of abuse by Ms. Curran in June 2001 mentioned above.⁷

⁷ A 51B report is a "report prepared pursuant to M.G.L. c. 119, § 51B detailing the MA DCF investigation into allegations of abuse or neglect upon a child and a determination by DCF whether there is reasonable cause to believe a child identified in the report has been, or is at risk

12. The EEC informed Ms. Curran that, as a result of the 51B report, she had a potentially disqualifying background. It invited her to provide additional information as part of EEC's review process. (Testimony, Riggs; Exhibit 1).
13. In response, Ms. Curran provided a candidate statement and additional references, including a statement from Child 1. (Exhibit 1; Exhibits 6-9.)
14. Edward Riggs was the EEC Background Check Unit specialist who conducted Ms. Curran's review. As of the date of the hearing, Mr. Riggs had worked as a reviewer at the EEC for one year but spent 26 years in law enforcement as a police officer. As part of his work as a police officer, Mr. Riggs was familiar with various investigatory techniques. (Testimony, Riggs.)
15. In conducting his review, Mr. Riggs considered the 51B report and the materials submitted by Ms. Curran. (Testimony, Riggs.)
16. In his review of Ms. Curran's application, Mr. Riggs considered the factors set forth in 606 CMR 14.12(f). (Testimony, Riggs.) These factors are:

1. Time since the incident(s);
2. Age of the candidate at the time of the incident(s);
3. Seriousness and specific circumstances surrounding the incident(s);
4. Relationship of the incident(s) to the ability of the candidate to care for children;
5. Number of [...] findings of abuse/neglect;
6. Dispositions of [...] findings of abuse/neglect;
7. Relevant evidence of rehabilitation or lack thereof; and
8. Other relevant information, including information submitted by the candidate.

606 CMR 14.12(2)(f). Findings Nos. 17-24 below relating to Mr. Riggs's consideration of these factors are based on his testimony, as well as from his written report. (Exhibit 3).

of being, abused or neglected. A 51B report will either support or unsupport the allegations of abuse or neglect.” 606 CMR 14.04.

17. The first factor (“Time since the incident(s)”) was an important one, but Mr. Riggs determined it to be neutral after he balanced the nature of the allegation against the fact that it had occurred 23 years ago. (Testimony, Riggs.)
18. Mr. Riggs concluded that the second factor (“Age of the candidate at the time of the incident(s)”) weighed more in Ms. Curran’s favor than against her because he did observe that she was younger at the time of the incident. (Testimony, Riggs.)
19. Mr. Riggs weighed the third factor (“Seriousness and specific circumstances surrounding the incident(s)”) heavily against Ms. Curran. This is because the conduct described in the 51B report concerned the way that Ms. Curran had treated a child in her care. (Testimony, Riggs.)
20. The same analysis applied to the fourth factor that Mr. Riggs considered, (“Relationship of the incident(s) to the ability of the candidate to care for children”), which also weighed against Ms. Curran. (Testimony, Riggs.)
21. In his assessment of the fifth factor (“Number of [...] findings of abuse/neglect”), Mr. Riggs observed that the 51B Report is the only supported finding in Ms. Curran’s record. (Testimony, Riggs.)
22. As for the sixth factor (“Dispositions of [...] findings of abuse/neglect”), Mr. Riggs’s report states that there was no involvement of the criminal justice system in resolving the 2001 incident or any time thereafter, but that the 2001 DCF report revealed, “a concerning pattern of behavior” by Ms. Curran which she did not adequately explain and for which she did not take responsibility. (Exhibit 3.)
23. The seventh factor (“Relevant evidence of rehabilitation or lack thereof”) did not assist Mr. Ms. Curran in Mr. Riggs’s estimation because she did not provide any records or other proof

of rehabilitation such as parenting classes. (Testimony, Riggs.)

24. The eighth factor (“Other relevant information, including information submitted by the candidate”) involved Mr. Riggs’s consideration of Ms. Curran’s personal statement and the references she provided, including the correspondence from Child 1. Because of the positive references, Mr. Riggs considered this factor to be favorable to Ms. Curran. (Testimony, Riggs.)
25. In her submission, Child 1 did not deny that abuse had occurred. Child 1 cited one incident in particular, stating that she “believed wholeheartedly it was an accident”. Child 1 noted that Ms. Curran and her former spouse were going through a “nasty divorce”, and that Child 1 was angry. Child 1 stated, “I had adults all around me putting things into my head that I feel [sic] may have exaggerated, without me aware of how bad things truly were at home.”
26. Weighing the eight factors, Mr. Riggs determined that Ms. Curran was “not suitable.” This determination was reviewed and approved by Mr. Riggs’s supervisors. (Testimony, Riggs; Exhibit 3.)
27. The EEC informed Ms. Curran that it had denied “discretionary approval of the Background Record Check” and that she could file a Notice of Claim requesting an adjudicatory hearing, which she did. (Exhibit 4).

CONCLUSION AND ORDER

Ms. Curran appeals the EEC’s determination that she is not a “suitable” “family childcare candidate.” For the reasons set forth below, I affirm the EEC’s decision.

A. Regulatory Framework

Since 2005, the EEC has been the agency responsible for, among other things, the licensing of early education and care programs. G.L. c. 15D, §§ 7-8. The EEC’s mission is to support

children in their development as lifelong learners and contributing members of their community. In accordance with its mission, the EEC has developed specific regulations to be met by all providers of early care and education. 606 CMR 7.01. Family childcare is one type of program that the EEC licenses and oversees. “Family childcare” is defined, in relevant part, as “temporary custody and care provided in a private residence during part or all of the day for no more than ten children under 14 years old.” *Id.* Under EEC regulations, the term “family childcare candidate” includes an individual seeking a license to open a family childcare program. 606 CMR 14.04.

When an individual applies for a family childcare license, the EEC is authorized to conduct a Background Record Check (“BRC”). A BRC is a review of certain information, including, but not limited to, (if applicable) the individual’s history of involvement with the DCF, which is a separate Commonwealth agency that is authorized to investigate reports of child abuse and neglect. 606 CMR 14.05(2)(a). Depending on the results of the BRC, an applicant may be found to be eligible for licensure or the applicant may be disqualified from licensure. There are three types of disqualification: mandatory, presumptive, and discretionary. An applicant “shall have a discretionary disqualifying background if the BRC discloses... (c) [t]hey have been found to be the person responsible for the abuse or neglect of a child...” 606 CMR 14.10(6). If an applicant’s BRC reveals a discretionary disqualifying background event, the individual is afforded an opportunity for a further review of their application and is provided an opportunity to submit additional information in support of the application. 606 CMR 14.11(7)

B. Discussion

The supported abuse allegations against Ms. Curran contained in the 51B report are a discretionary disqualification, subjecting her to the EEC's review process. 606 CMR 14.04. Under the EEC's review process, Ms. Curran must present "clear and convincing evidence demonstrating [her] suitability ... in light of the concern for children's safety." 606 CMR 14.12(e).

As discussed above, in determining her suitability, "due weight" must be given to several factors. 606 CMR 14.12(2)(f). When an applicant to be a childcare provider or a household member has a potentially disqualifying background, *see* 606 CMR 14.10(6), the EEC may conduct a discretionary review to determine whether to grant or deny a childcare license. That discretion is not unfettered. The EEC's regulations define what factors a reviewer must consider. *See* 606 CMR 14.12(f). These regulations also state that "the candidate [for a childcare license must present] clear and convincing evidence demonstrating the candidate's suitability for licensure, employment or affiliation in light of the concern for children's safety." An agency is bound to adhere to its regulations. *Royce v. Commissioner of Correction*, 390 Mass. 425, 427 (1983). This means that the EEC may not issue a license to a candidate with a potential disqualifying background if the candidate failed to present clear and convincing evidence of suitability. In this case, for the reasons discussed below, Ms. Curran has failed to produce clear and convincing evidence that she is a suitable candidate to provide childcare in her home.

A review of the record in this case reveals the supported finding that Ms. Curran abused Child 1 in or around June 2001. Her argument at hearing focused on the fact that in her estimation, more of the eight factors to be weighed by the EEC were favorable to her than were unfavorable, so she should have been granted a license. Mr. Riggs, however, credibly testified

and explained that at least two of the factors, the seriousness and specific circumstances surrounding the incident(s) and the relationship of the incident(s) to the ability of the candidate to care for children, weighed heavily against Ms. Curran. This is because the findings in the 51B report related directly to how she had treated a child in her care, which is exactly what she would be doing as a family childcare provider. The finding reads, in relevant part,

There is clear disclosure and corroboration of [Ms. Curran] consistently hitting [Child 1] causing her injury on at least one occasion...[Ms. Curran] intentionally strikes [Child 1]. Although she claims her hitting is for discipline reasons it appears that she does this impulsively and with little control...This SW believes [Child 1] should reside with [Child 1's other parent] as the primary caretaker until mother develops some insight into the physical and emotional impact her behavior has on [Child 1]....

In her testimony, Ms. Curran stressed that at the time of the incidents noted in the 51B report, she was going through a “nasty divorce” and that some of what she had discussed with the DCF social worker had been misconstrued in the 51B report. She suggested that the reports of abuse had been exaggerated, either by the social worker who investigated them, or by Child 1 at the time (with whom she now seems to have an improved relationship). However, Ms. Curran did not deny striking Child 1, and in her submission to DALA, Child 1 admitted abuse had occurred. Even at the hearing, held more than 23 years later, Ms. Curran did not express remorse for any of the conduct that was attributed to her and described in the report. Her tone of voice and demeanor revealed that she found these events stressful to recount. She still seemed angry about the events that transpired, including her divorce, the DCF investigation and the interview process that led to the supported finding of abuse.

Her testimony also revealed that she still has little insight into the physical and emotional impact that her past behavior may have had on Child 1. She also did not appear to appreciate the importance of maintaining a calm and even-keeled demeanor when interacting with young children, even when encountering stressful situations. This is a factor which the EEC

understandably weighed heavily in its review of Ms. Curran's application, especially in light of its concern to maintain the safety of children in the programs that the EEC licenses. Taken together, the evidence in the record supports the EEC's determination that Ms. Curran is not a suitable family childcare candidate. She has not presented clear and convincing evidence of suitability for licensure.

For the foregoing reasons, I recommend that the EEC's final agency decision affirm the determination that Ms. Curran is not a suitable family childcare candidate.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Melinda E. Troy, Esq.
Administrative Magistrate

Dated:

Exhibit List

1. Discretionary Review Application for Ms. Curran, dated April 24, 2024.
2. DCF 51B report dated June 20, 2001.
3. Discretionary Review Results by Edward Riggs dated May 28, 2024.
4. Notice of Claim by the Respondent dated May 29, 2024.
5. EEC Background Check Result dated May 29, 2024.
6. Undated letter by Heather Townsend in support of the Respondent.
7. Letter by Amy Nagger dated April 25, 2024 in support of the Respondent.
8. Letter by Suzanne Roberts dated April 23, 2024 in support of the Respondent.
9. Email from Child 1 in support of the Respondent.

