

COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

DEPARTMENT OF EARLY	:	
EDUCATION AND CARE,	:	
<i>Petitioner</i>	:	Docket No. OC-23-0396
	:	
v.	:	October 18, 2024
	:	
RUCHIKA GUPTA,	:	
<i>Respondent</i>	:	

Appearances:

For Petitioner: Ryan Foreman, *Esq.*
For Respondents: Stephanie Sousa, *Esq.*

Administrative Magistrate:

Eric Tennen

SUMMARY OF RECOMMENDED DECISION

The Respondent’s husband was charged with one count of assault and battery on a household member (his wife). The charge was dismissed. Nevertheless, because of this charge, the Department of Early Education and Care found he was a “not suitable” family household member. However, based on the evidence adduced at the hearing, which raises doubts about the initial version of events, and provides greater context to what occurred, I recommend the Department reverse its decision.

INTRODUCTION

Pursuant to 102 Code Mass. Regs. § 1.08(2)(a) and 606 Code Mass. Regs. § 14.14(2), Ms. Gupta timely appeals a decision by the Department of Early Education and Care (“DEEC” or “the Department”) finding her husband is “not suitable” as a family household member. On February 28, 2024, I conducted a virtual hearing on the WebEx platform, with the consent of both parties. Ms. Gupta testified and called one additional witness, her husband Raman Gupta. The Department presented one witness, Unique Dodd, the background check reviewer who

conducted Ms. Gupta’s discretionary review for DEEC. I entered exhibits 1-9 into evidence without objection. The parties submitted their closing briefs on June 28, 2024, at which point I closed the administrative record.

FINDINGS OF FACT

1. Ms. Gupta has operated a family daycare since 2021. (Respondent testimony.)
2. DEEC periodically conducts background checks even for existing licensees. The background checks are identical to the ones done in the initial licensing process. They look at, among other things, criminal history. The background check applies to the applicant and any household members living with them. (Dodd testimony.)
3. Some prior conduct is automatically or presumptively disqualifying. 606 Code of Mass. Regs. §§ 14.10(1) & (2). Other prior conduct may trigger a discretionary review process. *Id.* at § 14.10(6). (Dodd testimony.)
4. While conducting a routine background check, DEEC became aware that Ms. Gupta’s husband, a household member, had a criminal charge stemming from an incident in June, 2022 for Assault and Battery on a Family Household Member. This triggered the discretionary review process. (Ex. 1; Stipulated facts; Dodd testimony.)
5. The incident involved allegations that Ms. Gupta’s husband had physically assaulted her. (Stipulated facts; Ex. 4.)
6. The matter was ultimately dismissed because Ms. Gupta exercised her spousal privilege.¹ (Exs. 1 & 6.)
7. Ms. Gupta first reported the incident when she went to the police station. A police report

¹ “A spouse shall not be compelled to testify in the trial of an indictment, complaint, or other criminal proceeding brought against the other spouse.” Mass. G. Evid. § 504(a)(2023).

summarizes what she told them:

Ms. Gupta told me that the Incident in question began on the morning of Sunday, June 05, 2022 when she was preparing eggs for breakfast. [Her mother-in-law] reportedly took issue with what Ms. Gupta was doing and an argument began. During this argument, Mr. Gupta interjected himself and came to the defense of his mother. Later in the day, Mr. and Ms. Gupta began to argue again about the same Incident during which a struggle ensued over Ms. Gupta's anxiety medication. The pill bottle reportedly exploded and the pills contained within fell to the ground. According to Ms. Gupta, as she attempted to retrieve the pills, Mr. Gupta pushed her to the ground and struck her several times. When asked specifics about the assault, she described somewhat of a blackout moment but did state that she was struck "more than once" in an area ranging from the top of her head to her lower abdomen. She did not show apparent injuries that needed to be photographed and when asked, stated she had no marks or bruises.

(Ex. 5.)

8. The police report summarizes additional context Ms. Gupta provided:

[S]he advised me that Mr. Gupta has struck her once before while they were living in India. The incident happened many years ago and was never reported to Indian authorities. She further stated that Mr. Gupta's family was never really accepting of her and the majority of their marital disagreements revolve around that issue. The situation has become exaggerated as of late because during the COVID-19 pandemic, they moved Mr. Gupta's mother from India to Holliston to live with them. The frequency of their marital arguments have increased since his mother's arrival, which seems to be prompted by the long standing conflict between [Ms. Gupta and her mother-in-law]. The arguments typically revolve around [Ms. Gupta] not feeling as if her husband is supporting her and rather siding with his mother as she criticizes [Ms. Gupta] about how she runs the house. Ms. Gupta told me that she has been in counseling on account of the emotional toll the situation is having on her and has been prescribed anxiety medication as a result. According to Ms. Gupta, Mr. Gupta references her anxiety diagnosis frequently during arguments and uses it as leverage against her.

(Ex. 5.)

9. When interviewed by the Police, Ms. Gupta's husband denied a physical altercation and said they had a verbal argument earlier in the day. (Ex. 5.)
10. During the discretionary review process, Ms. Gupta was given a chance to explain her husband's charges. That is part of the standardized procedure. Whenever someone's

application triggers this process, they are given an application requesting certain materials and allowing them to explain their past conduct in what is called a “candidate statement.” (Ex. 4; Dodd testimony.)

11. Ms. Gupta’s husband submitted the “candidate statement” and Ms. Gupta also wrote a narrative explaining the incident. (Exs. 4 & 7.)
12. Mr. Gupta wrote that they had a verbal argument that night. The Police were not called during it. The argument left his wife feeling disappointed so later in the evening she went to the police and shared information that led to his arrest. (Ex. 4.)
13. Ms. Gupta wrote substantially the same thing. They had an argument that left her disappointed and lonely. She spoke to the police later in the evening. Before she knew it, they were on their way to arrest her husband, even though she did not want him charged, she just wanted to talk to someone about the incident. (Ex. 7.)
14. Ms. Gupta and her husband also submitted a few reference letters,² a copy of the court docket and police reports. (Exs. 1, 2, 3, 5 & 8.)
15. Once DEEC has all this information, and the application is complete, the reviewer—here Ms. Dodd—conducts the review by considering a series of factors listed in 606 Code Mass. Regs. § 14.12(f):

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 criminal offenses or findings of abuse/neglect;

² The reference letters are almost entirely identical. It is not clear if the authors were aware of the criminal accusations. The Department mentioned the reference letters in its review but did not seem to place much weight on them. Neither do I, given that they do not address the specific charges.

6. Dispositions of criminal offenses and findings of abuse/neglect;
7. Relevant evidence of rehabilitation or lack thereof; and
8. Other relevant information, including information submitted by the candidate.

(Dodd testimony.)

16. Ultimately, Ms. Dodd did not find Mr. Gupta to be suitable. Per DEEC terminology, he was considered a “disqualified household member.” (Ex. 6; Dodd testimony.)
17. She summarized her reasoning as follows:

It appears there was a physical altercation with Mr. Gupta being the aggressor. Mr. Gupta’s behavior in the home can create an unsafe environment to the children enrolled in his wife’s family childcare program. In light of the factors contained within 606 CMR 14.12(2)(f), EEC has determined that the candidate has **failed to submit** clear and convincing evidence to demonstrate their suitability for licensure[.]

(Ex. 6 (emphasis in original.))

18. At the hearing, Ms. Dodd further explained how she weighed the factors. She found three weighed against Mr. Gupta: the time since the incident (only 9 months), his age at the time of the incident (50 years old), and the seriousness and specific circumstances surrounding the incident. The other factors either weighed in his favor or were neutral.
(Dodd testimony.)
19. Ms. Dodd’s understanding of the facts was that Mr. Gupta struck his wife several times on the head and in the abdomen. Their children were present and attempted to intervene. She was aware that Ms. Gupta attended counseling and took anxiety medications, but believed Ms. Gupta’s husband used her mental health diagnosis against her. (Dodd testimony.)
20. Ms. Dodd’s review was based only on documentary evidence. She did not speak with the Guptas. (Dodd testimony.)

21. Ms. Gupta and her husband testified at the hearing and provided additional, relevant context to better explain the incident and their statements.
22. Ms. Gupta explained that, during the incident, her mother-in-law was living with the family. They never got along and that created a lot of tension. She felt that her husband often took her mother-in-law's side over her. (Respondent testimony.)
23. One Sunday morning, she started to make eggs for her daughter. However, her mother-in-law was in the kitchen and was upset because she could not eat eggs at that time for reasons related to her customs and/or religion. (Respondent and Mr. Gupta testimony.)
24. When her husband came in and saw this, he took his mother-in-law's side and was upset with Ms. Gupta. This did not sit well with Ms. Gupta and she began to shout at him. (Respondent testimony.)
25. It turns out Ms. Gupta had been diagnosed with anxiety and had been prescribed medicine, but only as needed. She believed strongly in a holistic approach and did not like having to take medication. She rarely, if ever, did. (Respondent testimony.)
26. When she began shouting at her husband, he suggested she was "going crazy" and should take her medication. He grabbed the bottle and held it up to her. His actions made her angrier. She tried to grab the bottle from him, and they both began to struggle over it. (Respondent testimony.)
27. They struggled with it for a moment at which point her husband pushed her hand away. When he did that, the bottle fell and the pills went everywhere. Ms. Gupta was angry and wanted to throw the pills out. When they fell to the ground, she tried to bend down and grab them. Her husband saw this and pushed her away. He was trying to prevent her from

getting to them. She tried a few more times and he pushed her away each time. He essentially kept his arm extended and she was unable to get past it. She emphasized that he did not “hit” or “slap” her but instead was pushing her away from the medication.

(Respondent testimony.)

28. In the meantime, Mr. Gupta told his mom that his wife was trying to overdose. He asked his mom to help him pick up the pills and called to their teenage son to do the same.

(Respondent testimony.)

29. Ms. Gupta was obviously upset and crying. They had many fights, and she thought this could be the end of their marriage. She was also bothered that her husband thought she was trying to self-harm, when that was the last thing she was trying to do. She was afraid that if they did separate, he would use this against her. That is what motivated her to go to the police. She wanted to document somewhere that she was not trying to hurt herself and explain what happened. (Respondent testimony.)

30. She tried to tell the police this, but clearly did not convey everything accurately. She had no intention of pressing charges or having her husband arrested. She was not afraid of him, nor did she think he harmed her. She did, however, want them to document that he should not have pushed her away because she was not trying to hurt herself. (Respondent testimony.)

31. The police report supposedly reported what she said but those were not the words she used. (Respondent testimony.)

32. Mr. Gupta explained the situation almost identically. He very much believed at the time that his wife needed to take her medication, but when she lunged for the bottle, he

- thought it was an attempt to take them all. In that moment, he was concerned that she was going to try and overdose. Any physical contact he had with her was solely for her own protection based on his perception at the time about her actions. (Mr. Gupta's testimony.)
33. Thus, he pushed her hand away from the bottle to prevent her from getting to it. When the pills spilled all over the floor, he saw her lunge for them and panicked. He did push her away several times because she kept trying to get them. In the meantime, he implored his mom and son to pick up the pills and get them away from her. (Mr. Gupta's testimony.)
34. He believes he did call his wife "crazy" or say she was "acting crazy." He regrets that now and sees how that, along with telling his mom and son his wife was trying to overdose, triggered Ms. Gupta. (Mr. Gupta's testimony.)
35. He added that, at the time, he was under tremendous stress. It was during the COVID-19 pandemic. He had lost many friends. He was working incredibly long hours. And his relationship with his wife was strained. He was tearful as he testified about this. (Mr. Gupta's testimony.)
36. He believes this stress contributed to his overreaction and his misperceptions. (Mr. Gupta's testimony.)
37. I find both witnesses credible for a variety of reasons.
38. As to Ms. Gupta, she was sincere. She did not sugarcoat her relationship with her husband and testified about things that did not paint her in the best light. Her explanation as to how the police may have misinterpreted her statements made sense. She understood why the police characterized what she said a certain way, since she did not provide a full

account or explain the entire context of the incident. I also think that with the passage of time, she had more insight into the incident than just after it happened.

39. As for Mr. Gupta, he was sequestered and did not hear either Ms. Dodd's or his wife's testimony. Yet his testimony was entirely consistent with his wife's. He was also sincere and emotional. He took responsibility for not handling the situation better. He was insightful into how his words and actions would have upset his wife, even if he did not recognize that at the time.
40. Both witnesses were experiencing significant personal and professional stress. Now that some time has passed, they were both able to look back at the incident more objectively and rationally.

DISCUSSION

When an applicant to be a childcare provider or a household member has a potentially disqualifying background, *see* 606 Code Mass. Regs. § 14.10(6), DEEC may conduct a discretionary review to determine whether to grant or deny a childcare license. That discretion is not unfettered. DEEC's regulations define what factors a reviewer must consider. *Id.* at § 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 DEEC 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. By the same token, if the candidate presented clear and convincing evidence of suitability, DEEC must grant the license.

There are myriad cases where the Department denied an applicant a license during the discretionary review process relying on a substantiated allegation of abuse or a criminal conviction. *See, e.g., EEC v. Aguilar*, OC-23-0251, at *9 (Dec. 21, 2021), citing cases. But there are also many cases in which the Department's denial is based on mere unsubstantiated allegations or charges that did not result in convictions. *See, e.g., EEC v. Nguyen*, OC-18-0430 (DALA Mar. 12, 2020); *EEC v. Nasra*, OC-18-376 (DALA Oct. 25, 2018); *EEC v. Goss-Johnson*, OC-16-407 (DALA Jun. 26, 2017). The Department may certainly rely on uncharged conduct, but its review must evince a careful evaluation of the facts. It is one thing for an agency to rely on the facts of an incident when the accused was, for example, convicted of the crime. It is another thing to accept as true alleged facts after the legal process has provided no verdict and, in this instance, the prosecution has abandoned its allegations. That requires a more searching inquiry.

It was the Respondent's burden to show by clear and convincing evidence that the serious, but unresolved, charges against her husband does not reflect on his ability to be a household member at her proposed childcare facility. In the Department's initial review, it found the Respondent did not meet her burden, even if the circumstances were more ambiguous than Ms. Dodd acknowledged: the complainant—the Respondent—recanted the initial accusation as reported in the police report. *Contrast DEEC v. Waller*, OC-23-0266 (only evidence complainant recanted was uncorroborated totem-pole hearsay).

Whether or not the Department's review met their standard, I should consider new evidence that emerges at a hearing, especially if it sheds light on a particular factor or provides context not apparent from the record before it. *See Jarominski v. DEEC*, FCC-22-038 (May 24, 2024), final agency decision reviewing *DEEC v. Jarominski*, OC-22-0329 (DALA Dec. 21,

2023). The new evidence at the hearing paints a significantly different picture than what was before the Department in their initial review. Mr. Gupta was not an aggressor. The physical contact was not intended to be violent. Rather, he was trying to protect his wife because he thought she was trying to hurt herself. In retrospect, Ms. Gupta did not intend to hurt herself, but in the heat of the moment, her husband did not see that. His perception, which I credit, is that Ms. Gupta was reaching for the pills to ingest them. He pushed her away to keep her from reaching the pills while he and his family picked them up. Ms. Gupta does not dispute this. Indeed, she correctly understood her husband thought she wanted to hurt herself when that was not her intention. She was worried that would be used against her and went to the police to document that she was fine and did not intend to hurt herself.

As both Ms. Gupta and Mr. Gupta recount, they overreacted in the moment and could have handled it better. Even so, this was not an incident of what is typically understood as domestic violence—one spouse abusing another. That is the impression the Department had when it issued its decision. Given the facts developed at this hearing, the Department’s impression was mistaken, especially considering there was no conviction or admission.

CONCLUSION AND RECOMMENDED ORDER

Given the new evidence adduced at the hearing, which I credit, I recommend the Department’s decision be **reversed**.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

Eric Tennen
Administrative Magistrate