

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS**

Middlesex, ss.

M.A.,
Petitioner,

Docket No.: OC-26-0047

v.
Department of Early Education and Care,
Respondent.

Appearances:

For Petitioner: M.A., pro se
For Respondent: Nicole Munroe, Esq.

Administrative Magistrate:

Eric Tennen

SUMMARY OF RECOMMENDED DECISION

The Department of Early Education and Care denied M.A.'s application for a childcare license. Its decision was based on a DCF finding of neglect: M.A.'s daughter was exposed to fentanyl while at a friend's house and had to be rushed to the hospital. However, despite the very serious, and potentially tragic, nature of this incident, it is not apparent that M.A. did anything wrong. Rather, the incident appears to have been an unfortunate and unpredictable accident.

INTRODUCTION

Pursuant to 102 Code Mass. Regs. § 1.08(2)(a) and 606 Code Mass. Regs. § 14.14(2), the Petitioner timely appeals a decision by the Department of Early Education and Care ("EEC" or "the Department") denying her application for a family childcare license. On June 11, 2026, I conducted an in-person hearing. The Department presented one witness, Vincent Kelly, the background check reviewer who conducted the Petitioner's discretionary review. The Petitioner

testified on her own behalf. I entered exhibits P1-P24 and R1-R19 into evidence.¹ The parties submitted closing statements by July 15, 2026, at which time I closed the administrative record.

FINDINGS OF FACT

1. M.A. applied for a family childcare license in 2025. (Ex R1.)
2. When she applied, EEC began a background check. A background check looks at, among other things, any prior criminal record and/or involvement with the Department of Children and Families (“DCF”). (Kelly.)
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). (Kelly.)
4. As part of the background review, EEC found information that triggered its discretionary review process: a DCF supported allegation of neglect from 2023. (Ex. R2-R4; Kelly.)

2023 Incident

5. In its review, EEC relied on details from several DCF and police reports. Those collectively explained the incident as follows. (Ex. R1.)
6. M.A. was separated from her daughter’s father (“Father”). At the time of this incident, she had a restraining order against him, and he was not living at their home. The two of them were not getting along and accused each other of wrongdoing. (Exs. R2-R4.)

¹ M.A. submitted five new proposed exhibits in her closing brief. Two are new documents and three are legal sources (DALA decisions and my order of impoundment). Because these were not submitted prior to, or at, the hearing, and were not previously provided to Department counsel, I do not enter them into evidence. I mark them collectively as A for identification.

7. M.A. and Father had a 6-year-old daughter (“Daughter”) together. Father’s 17-year-old daughter, M.A.’s stepdaughter (“Stepdaughter”), also lived with M.A. Stepdaughter had only been in the United States since July 2023. (Exs. R2-R4.)
8. DCF first opened an investigation into M.A. based on allegations that she was leaving Stepdaughter in charge of caring for Daughter. Sometimes there would be no food and Stepdaughter would have to cook for her and her stepsister. When M.A. worked, she left early in the morning and on some days would not return home until around 11:00 p.m. According to Stepdaughter, many days she came home drunk.² (Exs. R2-R4.)
9. In August 2023, Daughter had to be rushed to the hospital because she had overdosed on fentanyl and required Narcan. (Exs. R2-R4, & R7.)
10. By all accounts, she ultimately made a full recovery. (M.A.; Ex. P23.)
11. The circumstances that led to the overdose are not entirely clear, but a certain picture of what happened emerged.

² Stepdaughter had only been in the country for about one month when DCF opened the investigation. There had been no complaints about M.A.’s care of Daughter before that. But the complaints against M.A. came to light after M.A. and Father separated, M.A. took out a restraining order against Father, and Stepdaughter came to live with M.A. in an arrangement that M.A. did not totally want. M.A.’s Daughter corroborated that her sister sometimes took care of her when M.A. was working late, but she did not complain that she stayed home alone (or with sister) for long stretches of time. DCF’s concern was not that Stepdaughter was taking care of Daughter, just that she was left in charge of her for too long. And after DCF spoke to M.A. about this, M.A. said she would stop leaving Stepdaughter alone with Daughter.

It is hard to know what to make of these allegations. DCF recounted the allegations against M.A. in its neglect finding but was rightly more concerned about the other basis for the neglect findings (described below). Thus, it is not clear how much these allegations weighed into DCF’s neglect finding. (Exs. R2-R4.)

12. M.A. works in a salon. Daughter was with her at the salon that day. After work, her friend invited them to come over to her house. (Exs. R2,-R4, & R7-R9.)
13. M.A. and Daughter had both been there before. (Exs. R2-R4, & R7-R9.)
14. There were several adults and kids present. The adults were cooking and drinking wine; the children were playing with each other. (Exs. R2-RR, & R7-R9.)
15. At some point, M.A.'s daughter complained she did not feel well. She was dizzy and then became more and more lethargic. M.A. may have tried to give her a shower or bath. But it soon became apparent Daughter was very sick and needed immediate medical care. (Exs. R2-R4, & R7-R9.)
16. One witness told the police M.A. did not want to take her daughter to the hospital at first because she was worried about the issues with Father. Whether that is true or not, when it was clear her daughter needed medical attention, instead of waiting for an ambulance, M.A. drove her daughter directly to the hospital. (Exs. R2-R4, & R7-R9.)
17. Daughter apparently had ingested fentanyl. M.A. did not know how Daughter was exposed to fentanyl. She was with her all day, first at the salon then at her friend's house. She suspected it may have been when Daughter drank soda out of cup. It was unclear where the cup and soda came from, so they may have been the source. But other witnesses say all the children were drinking soda and M.A.'s daughter was the only one to get sick. (Exs. R2-R4, & R7-R9.)
18. The police interviewed multiple parties to try and figure out how or when M.A.'s daughter may have been exposed. Ultimately, they were unable to draw any conclusions

about how this happened and no charges were brought. (Exs. R7-R9.)

19. Father spoke with DCF during the course of DCF's investigation. He leveled several accusations against M.A. He said M.A. was generally neglectful, leaving Daughter with other people often. He added that she had problems with alcohol; she had stopped drinking but had started up again. (Exs. R7-R9.)
20. He also said he had warned M.A. about her friend's apartment. He told her not to go there because he believed her friend's husband sold drugs. (Exs. R7-R9.)

Discretionary Review Process

21. As part of the discretionary review process, M.A. submitted a detailed candidate statement explaining her version of events. Among other things, she said that, upon discovering the situation, "[she] acted immediately and transported [her] daughter to [the] hospital[.]" She added that the "incident occurred outside [her] home and beyond [her] direct supervision, in a setting that was not under [her] control." (Ex. R1.)
22. She highlighted several classes she had taken since, in an effort towards rehabilitation. She also included several letters of support. (Ex. R1.)
23. Once a prospective daycare operator's application is complete, the EEC reviewer—here Mr. Kelly—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;

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.

(Ex. R1; Kelly.)

24. Mr. Kelly explained how he weighed the different factors. (Kelly.)
25. The incidents were recent, M.A. was an adult when they occurred, the fentanyl incident was extremely serious (because it involved a dangerous drug), they relate to her ability to take care of children, there were two incidents within a month, which shows a pattern, and there were two findings of neglect. All of these raised significant concerns.
(Kelly.)
26. He also highlighted two other concerns. First, he noted M.A. did not call 911 immediately but instead tried to see if Daughter would get better by, for example, giving her a shower. He also noted Father's warning to M.A. about the dangers of her friend's house. (Kelly.)
27. He acknowledged that she submitted a certificate of parenting from a program and that she took responsibility for her actions. Those circumstances did not weigh much in her favor for him, though, because of her age and recency of the incident. (Kelly.)
28. He did not remember if he had seen a letter from a mental health therapist. He did see evidence from probate court showing the court awarded custody to M.A., but Mr. Kelly did not consider that. He could not remember the details of her candidate statement other than it was "very long." He did not have access to a letter from M.A.'s DCF worker. And he was only aware that she had taken one parenting class, not two. (Kelly.)

29. Regarding the fentanyl situation, I asked Mr. Kelly what if anything was intentional and how much that weighed in his decision. He responded that not calling 911 was intentional. I followed up by asking at what point he thought M.A. should have called 911 and he said he personally would have called before putting the child in the shower. Mr. Kelly added the DCF report contained an allegation that M.A. did not want to call 911 because of problems with Father. (Kelly.)
30. Later, Mr. Kelly did say M.A. may have thought it would be faster to take Daughter to the hospital and not wait for an ambulance to arrive. (Kelly.)
31. After more discussion, Mr. Kelly emphasized M.A.'s poor judgment in not heeding Father's warning. (Kelly.)
32. When asked about the significance of the allegations that Stepdaughter was taking care of Daughter, Mr. Kelly candidly explained he was less concerned with that than with the fentanyl incident. At most, Stepdaughter's taking care of Daughter may have shown some poor judgment on M.A.'s part but he implied that was not really driving his review. (Kelly.)

Evidence at the hearing

33. M.A. presented additional information at the hearing, not available in the review process.
34. She first explained her Stepdaughter had just arrived in the U.S. around July. She did not really know her or trust her to take care of her daughter. Rather, she would bring Daughter with her to her the salon. She denied some of the things Stepdaughter said

- about how late she would come home and that she left her alone with Daughter. (M.A.)
35. As to the fentanyl incident, she and Daughter had been to her coworker's house before. M.A. knew her coworker had a boyfriend but she had no idea he may have been dealing drugs. (M.A.)
36. As for Father telling her there might be drug dealing going on in the home, M.A. never thought her coworker would be involved with that. She thought if there were illegal things going on, her coworker would never have invited her, other mothers, and their kids over. (M.A.)
37. She suspected the fentanyl came from her daughter drinking out of a random cup. She denied not wanting to take Daughter to the hospital. She simply did not know what was going on and was trying to help her feel better. She had no experience with drug overdoses so had no idea what one might look like. (M.A.)
38. While they were on the way to the hospital, her daughter began to have convulsions. That was the first time that happened. (M.A.)
39. To make clear M.A. was not using drugs. she went to get a drug test two days after the incident. The results were negative. (M.A.; ex. 21.)
40. She emphasized that the fentanyl ingestion did not occur in her house. She would never have exposed her daughter to this danger. That night, there were several other children and their mothers there, so she had no reason to suspect this could occur. (M.A.)
41. Right after this happened, Father took custody of Daughter. But eventually he and M.A. came to an agreement, and the family court returned custody to her (shared with

- Father). The court did this while being aware of the DCF incidents. (M.A.; ex. 14.)
42. Her case was open with DCF for about one year. DCF asked her to take the parenting classes and would show up to her house unannounced. Ultimately she complied with everything DCF asked and DCF had no further concerns. This included her taking two parenting classes. (M.A.; exs. 2-3, 20.)
43. She submitted 11 letters of support. Many were from licensed daycare providers who were aware of the DCF findings against her. All raved about how great a caretaker she has been and were confident she would be an excellent daycare provider. (Exs. 4-13, 24.)
44. She also went to a mental health counselor during a “challenging period involving a family legal matter.” There, “she demonstrated responsibility and insight by proactively engaging in mental health services.” The counselor believes M.S. is “fully capable of providing a safe, structure [sic] and nurturing environment for children. She had demonstrated the qualities necessary to responsibility [sic] care for minors, including patience, consistency, and appropriate decision-making.” (Ex. 1.)

DISCUSSION

When an applicant for a childcare license has a potentially disqualifying background, EEC may conduct a discretionary review to determine whether to grant or deny the license. 606 Code Mass. Regs. § 14.10(6). That discretion is not unfettered. EEC’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." *Id.* An agency is bound to adhere to its regulations. *Royce v. Commissioner of Correction*, 390 Mass. 425, 427 (1983). This means that 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. By the same token, if the candidate presented clear and convincing evidence of suitability, EEC must grant the license.

Supported allegations of abuse or neglect by DCF may form the basis for a valid discretionary denial of a license application. *See EEC v. Berroa-Abad*, OC-25-0009, 2025 WL 2365553, *4 (Div. Admin. Law Apps. Aug. 6, 2025); *EEC v. Curran*, OC-24-0351, 2025 WL 509465, *4 (Div. Admin. Law Apps. Feb. 7, 2025). However, there must at least be some corroboration that the abuse or neglect occurred: for example, an admission by the party or evidence from the investigation. *Berroa-Abad, supra*; *EEC v. Vasquez*, OC-24-0664, 2025 WL 2365552, *3 (Div. Admin. Law Apps. Aug. 6, 2025); *cf. EEC v. Barra*, OC-25-0693, 2026 WL 1256779, *2 (Div. Admin. Law Apps. May 1, 2026) ("It is also clear that the department cannot act against an applicant when it possesses no evidence whatsoever of wrongdoing."). Here, it is genuinely unclear what DCF alleges M.A. did wrong. Its report does not point to misconduct as much as it summarizes a harrowing experience. DCF ultimately recommended the case be open for services because it was "evident that the relationship between [M.A.] and [Father] has been impacting their daughter."

Given that ambiguity, Mr. Kelly's analysis was not helpful. First, he did not articulate anything M.A. did wrong in her daughter's exposure to fentanyl. Mr. Kelly makes much of Father's statement to DCF that he had warned M.A. about her friend's house. But that was an uncorroborated statement that Mr. Kelly chose to believe even though M.A. and Daughter had

been to this house before without incident.³ Also, Mr. Kelly did not take into account the acrimonious relationship M.A. and Father had in believing everything Father said but almost nothing M.A. said. Thus, his criticism that M.A. should not have taken Daughter to this house at all is unfounded.

Next, Mr. Kelly kept emphasizing that M.A. did not call 911 right away. But it was not apparent that anyone in her position would have called 911 right away when she had no idea her daughter had been exposed to fentanyl and could have suspected her daughter was instead experiencing non-threatening medical symptoms. Her daughter was dizzy and generally felt ill; most parents would agree that does not warrant calling 911. When it became apparent Daughter was getting worse, M.A. immediately took her to the hospital even though she still did not know what was wrong with her. Mr. Kelly imputes retroactive knowledge to M.A. that her daughter was exposed to fentanyl when that was not clear in the moment.⁴

He also criticized M.A. for driving Daughter to the hospital instead of calling 911. But when asked at the hearing why that was a problem, he did not have a concrete explanation. He even agreed M.A. may have thought it was quicker to take her daughter directly there than instead wait for an ambulance to arrive—again, a sensible parental response based on how

³ Although not part of the information he had access to review, M.A. testified at the hearing that Father did warn her, but she had no reason to believe it was true. She knew her friend and M.A. had been to her friend's house before. Also, M.A. and Father were not getting along so M.A. was not inclined to believe him. (M.A.)

⁴ Indeed, while M.A. thinks Daughter ingested fentanyl by drinking the soda out of the cup, that is not the apparent source of the exposure. Other kids drank the same soda in the same house and no one else was exposed. And the police were unable to draw any conclusions about where or how Daughter was exposed despite interviewing M.A., Daughter, and other people present that night.

M.A. perceived the situation. I do not mean to downplay the serious and life-threatening situation in which M.A.'s daughter found herself. But tragic things happen often by accident; not every bad situation implies someone was neglectful. Having read (and re-read) the DCF reports in this case, and listened to Mr. Kelly's testimony, I am still at a loss as to what M.A. did that was neglectful.

That leaves simply the allegations that M.A. left her daughter alone with Stepdaughter for too long. As noted, it is not apparent this was a basis for the DCF's finding of neglect. To the extent it was, both DCF and Mr. Kelly were less concerned about this than the fentanyl incident. When DCF told M.A. she should not leave Stepdaughter in charge of her daughter, M.A. agreed she would not do that anymore. That appears to be the end of that problem since it was not raised again in any report or investigative document. Thus, this alone could not have been the basis for the neglect finding or EEC's decision denying M.A. her license.

Moreover, there was additional evidence that came out at the hearing that I should consider. *See EEC v. Peralta*, OC-24-0353, 2025 WL 1148337, *5 (Div. Admin. Law Apps. Apr. 9, 2025); *EEC v. Fournier*, OC-24-0508, 2025 WL 1092640, *9 (Div. Admin. Law Apps. Apr. 1, 2025). M.A. complied with all of DCF's directives and DCF expressed no further concerns. A probate court ultimately awarded her and Father joint custody despite knowing about this incident. M.A. took parenting classes and underwent mental health counseling. And she submitted numerous and glowing character references, including many by care providers aware of the case with DCF. In all, to the extent M.A. exercised poor judgment—again, something I do not find she did—her actions after this incident show someone committed to improving her judgment and who is by all accounts a reliable caregiver.

CONCLUSION AND RECOMMENDED ORDER

Because the evidence does not support a finding that M.A. was neglectful, I recommend EEC *reverse* its decision and grant M.A. her license.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Date: September 9, 2026

/s/ Eric Tennen

Eric Tennen
Administrative Magistrate