

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

**Department of Early Education
and Care,**

Petitioner

v.

Docket No. OC-24-0046

William De Oliveira Miranda,
Respondent¹

Appearance for Petitioner:

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

Appearance for Respondent:

William De Oliveira Miranda, *pro se*

Administrative Magistrate:

Timothy M. Pomarole, Esq.

SUMMARY OF RECOMMENDED DECISION

The Respondent's fiancée applied to the Department of Early Education and Care ("EEC") for a license to open a family childcare program. Because the Respondent resides in the home in which the childcare would be provided, he is also considered a

¹ When initially entered in this Division, the caption listed the Department of Early Education and Care (the "EEC") as the Petitioner and William De Oliveira Miranda was designated as the Respondent, perhaps because the EEC had referred this matter to this Division for a hearing. Mr. William De Oliveira Miranda should have probably been designated as the Petitioner because he filed the notice of claim for an adjudicatory hearing, thus initiating the present appeal. For purposes of consistency with earlier submissions in this matter, and because Mr. De Oliveira Miranda's burden in this matter is set forth in the body of the decision, this decision will retain the party assignments used when this case was entered.

family childcare candidate. The EEC conducted a background check and learned that the Respondent is the subject of a G.L. c. 119, § 51B report containing “supported” allegations of neglect based on (1) the Respondent’s decision to leave his eight-year-old daughter and two-year-old son alone for approximately one-half hour; and (2) various concerns arising from general family instability and tensions between the Respondent and his former wife. The EEC concluded that the Respondent is not a “suitable” family childcare candidate.

I recommend that the EEC’s final agency decision find the Respondent suitable. In support of its initial decision, the EEC contends that the Respondent exercised flawed judgment in leaving his children alone and expresses concern that he would exercise similarly flawed judgment in the future. The EEC acknowledges, however, that the Respondent would not be providing childcare. He would merely be on the premises of the proposed family childcare program. Because he is not going to be providing childcare, it is not clear (and the EEC has not explained) how the “flawed judgment” he exercised in the past could impact the safety of children who would not be under his care. The EEC’s initial determination is also based on concerns relating to an unstable family situation. Those concerns arose because of tension between the Respondent and his former wife. That situation has resolved, and there is no evidence that the resulting instability persists.

RECOMMENDED DECISION

William De Oliveira Miranda appeals a determination by the Department of Early Education and Care (“EEC”) that he is not a “suitable” “family childcare candidate.” Mr. De Oliveira Miranda 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 May 22, 2024. The hearing was recorded. I admitted Exhibits 1-3 into evidence.²

Leah Abel, an EEC Background Record Check Unit specialist, testified on behalf of the EEC. Mr. De Oliveira Miranda testified on his own behalf. Mr. De Oliveira

² I granted the EEC’s motion to impound Exhibit 3.

Miranda's now ten-year-old daughter also testified. In the interest of her privacy, this decision will not refer to her by name.³

Mr. De Oliveira Miranda and his daughter testified in Brazilian Portuguese. An interpreter, Bertolt Cantalice, provided interpretation.

FINDINGS OF FACT

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

A. Background and Proceedings Before the EEC

1. Mr. De Oliveira Miranda and his ex-wife, Hellen Cristina Dos Santos, have three children: a daughter and two sons. (De Oliveira Miranda Test.).
2. Mr. De Oliveira Miranda is engaged to Maria Louisa (I could not find her surname in the record), with whom he has a daughter. (De Oliveira Miranda Test.).
3. All of Mr. De Oliveira Miranda's four children currently live with him and Maria Louisa. (De Oliveira Miranda Test.)
4. Maria Louisa applied to the EEC for a license to operate a family childcare program. (Abel Test.).
5. Because Mr. De Oliveira Miranda is a member of Maria Louisa's household, the EEC performed a background check on Mr. De Oliveira Miranda. (Abel Test.).
6. As a result of the background check, the EEC learned that the Department of Children and Families ("DCF") had issued a 51B report supporting allegations of neglect by

³ Neither party raised concerns about the daughter's competency to provide testimony at the hearing.

Mr. De Oliveira Miranda. (Abel Test; Exhibit 3).⁴

7. The 51B report bears a decision date of August 1, 2022. (Exhibit 3).
8. The 51B report supports allegations of neglect by Mr. De Oliveira Miranda with respect to his children with Ms. Dos Santos. (Exhibit 3).⁵
9. According to the 51B report, Mr. De Oliveira Miranda left his then-eight-year-old daughter and his two-year-old son home alone. (Ms. Dos Santos was with their infant son, who had been admitted to the hospital with an infection.) The 51B report does not describe the circumstances or the length of time they had been left alone, but notes that Mr. De Oliveira Miranda reported that it had been twenty-five minutes. (Exhibit 3).⁶ This event appears have precipitated an investigation by DCF.

⁴ 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 of being, abused or neglected. A 51B report will either support or un-support the allegations of abuse or neglect.” 606 CMR 14.04.

⁵ Because there was no challenge before DCF to the 51B report, I assume here the soundness and validity of DCF’s determination that the neglect allegations against Mr. De Oliveira Miranda were “supported” (that is, that there was “reasonable cause” to conclude that there had been neglect). *Cf. Kyle K. v. Department of Children and Families*, 103 Mass. App. Ct. 452, 462-63 (2023) (stating that when a party failed to raise certain alleged deficiencies in DCF proceedings his arguments concerning them were deemed waived). Although I consider myself bound to accept the bottom-line conclusion that there had been neglect, I observe that most of the 51B report consists of short interview or encounter summaries that convey often one-sided or conflicting accounts of the relevant events and circumstances. (Exhibit 3). I do not consider myself bound to accept any specific allegation or statement made by the report’s interviewees. In this decision, I credit statements in the 51B report to the extent they recount what the investigator saw or heard. I also credit apparently uncontroversial details, such as the parent or parents with whom the children were staying at any particular point in time.

⁶ The 51B report states that Mr. De Oliveira Miranda’s daughter also told a DCF investigator that her father had left her alone a few times and that she did not feel safe when this happened. (Exhibit 3). The report does not contain any details or reflect any follow-up inquiries about this statement.

10. The 51B report depicts a tense relationship between Mr. De Oliveira Miranda and Ms. Dos Santos. At the time of the report, they were still married, but were estranged. Mr. De Oliveira Miranda, by the time of the DCF investigation, was already romantically involved with Maria Louisa, his current fiancée, and they had a daughter together. (Exhibit 3).
11. At some point prior to or at the beginning of the DCF investigation, Ms. Dos Santos removed her two older children from the family home (the baby was already with her). She told the investigator that this was because Mr. De Oliveira Miranda had left the two children home alone. The children were at first with her at the hospital where the youngest was being treated. Ms. Dos Santos and the children apparently stayed with a friend or relative after the youngest child had been discharged. The eight-year-old daughter started missing school during this time, although she had apparently had a good attendance record up to this point. Mr. De Oliveira Miranda told the investigator that he was concerned about his daughter's school attendance. (Exhibit 3).
12. On June 2, 2022, Mr. De Oliveira Miranda told the investigator during a home visit that both Ms. Dos Santos and their children were welcome to come back to the home. (Exhibit 3). On June 6, 2022, Ms. Dos Santos told the investigator that Mr. De Oliveira Miranda would not allow her and the children to return to the home. (Exhibit 3).
13. During a June 8, 2022 home visit, Ms. Dos Santos informed the investigator that she had returned to live in the home. Mr. De Oliveira Miranda said that Ms. Dos Santos and the children could stay as long as they needed to and that he was happy to care

for the children. (Exhibit 3).

14. On or about June 13, 2022, Mr. De Oliveira Miranda secured a restraining order against Ms. Dos Santos. He told the investigator that she had been verbally attacking him and had attempted to lock him out of the home, and that he did not want the children to witness that behavior. It appears from the report that Ms. Dos Santos again removed the children from the home. Mr. De Oliveira Miranda told the investigator that he would be happy to have the children return home. (Exhibit 3).
15. On June 14, 2022, Ms. Dos Santos dropped the children off with Mr. De Oliveira Miranda. (Exhibit 3).
16. On June 16, 2022, their daughter, who was staying with her father, called the investigator, crying and saying that she did not feel safe with her father. When asked if something had happened, she responded that her father was yelling about her mother and about having to take care of her and her siblings. (Exhibit 3).
17. On July 19, 2022, the investigator texted Mr. De Oliveira Miranda about seeing the home again. (There had been two prior visits to the family home.) Mr. De Oliveira Miranda texted back that she could come over the following afternoon at 4 pm. When the investigator went to the home at the scheduled time, however, she could hear people inside, but nobody opened the door. She left a voicemail for Mr. De Oliveira Miranda, but did not hear back. (Exhibit 3).
18. The section of the 51B report titled “Investigation Conclusion” contains fields for “Disposition,” “Investigation Decision,” “Disposition Comment,” and “Supervisor Comment.” These sections are blank. (Exhibit 3).
19. According to Ms. Abel, 51B reports frequently contain a summary providing an

explanation for the DCF's determinations. (Abel Test.). The 51B report in this case does not contain a summary. In a supervisor's note, however, the supervisor states that "the case should be open as there appears to have been neglect further parents have not presented with a stable [*sic*]." (Exhibit 3).

20. The EEC informed Mr. De Oliveira Miranda that, as a result of the 51B report, he had a potentially disqualifying background. It invited him to provide additional information as part of EEC's review process. (Abel Test; Exhibit 1).

21. In response, Mr. De Oliveira Miranda provided a candidate statement. That statement is not in the record. The EEC summarizes Mr. Miranda's candidate statement as follows:

Regarding the incident he states his children were in his care and his ex-wife called claiming he had left the children home alone. He reports he went to the pharmacy for four minutes to get medicine for his son. He reports both children were sleeping when he left. When he arrived home from the pharmacy the police were arriving as well. He spoke with the officer and the officer saw that everything was okay, according to Mr. De Oliveira Miranda. He told the officer he had a neighbor who lived next door watching and could call if she needed him. He reports his daughter had a phone as well. After the incident a social worker followed him for a year and saw that he never had any problems regarding the care of his children. The case was then closed. He further states as a father he has always taken all necessary care for his children.

(Exhibit 1).⁷

22. Mr. De Oliveira Miranda provided one reference, his landlady, who described him as a "good person, wonderful father and a dedicated protector and friend." (Exhibit 1).

23. Ms. Abel was the EEC Background Check Unit specialist who conducted Mr. De Oliveira Miranda's review. Ms. Abel has worked as a reviewer at the EEC for five

⁷ The reference to a four-minute trip to the pharmacy appears to be an error. Mr. De Oliveira Miranda testified that it was no more than thirty minutes. In the 51B Report, it states that Mr. De Oliveira Miranda had said it was twenty-five minutes.

years. (Abel Test.).

24. In conducting her review, Ms. Abel considered the 51B report and the materials submitted by Mr. Miranda. (Abel Test.).

25. In her review of Mr. De Oliveira Miranda's application, Ms. Abel considered the factors set forth in 606 CMR 14.12(f). (Abel Test.). 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). The findings below (in paragraphs 26 through 36) relating to Ms. Abel's consideration of these factors are based on her testimony, as well as from her written report. (Exhibit 1).

26. The first factor ("Time since the incident(s)") was "heavily weighed" against Mr. De Oliveira Miranda by Ms. Abel because the incident was fairly recent, only a year and one-half before Maria Louisa applied for a childcare license. . (Abel Test.).

27. Ms. Abel concluded that the second factor ("Age of the candidate at the time of the incident(s)") did not weigh against Mr. De Oliveira Miranda as heavily as other factors, but she did observe that he was, at the time of the incident, an "adult capable of making adult decisions." (Abel Test.).

28. Ms. Abel weighed the third factor ("Seriousness and specific circumstances surrounding the incident(s)") very heavily against Mr. De Oliveira Miranda. Ms. Abel remarked that the incident of leaving the children home alone was "very

concerning.” Ms. Abel testified that her consideration of this factor was also based on the following:

- A “general lack of stability due to fighting between the parents.”
- “There were reports that Mr. De Oliveira Miranda had kicked his wife and the children out of their home on multiple occasions -- at one point leaving them to sleep in a car.”
- “There were concerns raised for the eldest child’s education, and she was not being taken to school regularly.”
- “There were also statements regarding one of the children calling a DCF worker very upset, saying that they were afraid and did not feel safe with their father.”

(Abel Test.).⁸

29. As for the fourth factor (“Relationship of the incident(s) to the ability of the candidate to care for children”), Ms. Abel testified that Mr. De Oliverira Miranda’s decision to leave the children home alone constituted “flawed judgment” that gave rise to a concern that he would exercise similarly flawed judgment with respect to children being cared for in his home. Ms. Abel wrote in her report that “the incidences which led to Mr. De Oliveira Miranda’s disqualifying background directly relates to his ability to provide care and safety to children in his care.” (Exhibit 1).

30. At the hearing, Ms. Abel acknowledged there was no expectation that Mr. De Oliveira Miranda would be responsible for childcare. Instead, he was “just someone who lives in the home and would be present at times.” (Abel Test.).

31. Ms. Abel also stated that the level of interaction an individual will have with children is considered in the suitability determination. (Abel Test.). It is not clear how the

⁸ These quotations from Ms. Abel’s testimony represent her understanding of statements or details conveyed in the 51B Report.

level of interaction affected Ms. Abel’s determination in this case.

32. In her assessment of the fifth factor (“Number of [...] findings of abuse/neglect”),

Ms. Abel observes that the 51B Report is the only supported finding in Mr. De Oliveira Miranda’s record. (Abel Test.).

33. As for the sixth factor (“Dispositions of [...] findings of abuse/neglect”), Ms. Abel’s report notes that Mr. De Oliveira Miranda provided the EEC with a letter from DCF dated May 5, 2023. That letter is not in the record. According to her report, the letter stated that DCF would be closing the family’s case and listed services that would no longer be provided to the family, but did not provide a reason for closing the case. (Exhibit 1).

34. The seventh factor (“Relevant evidence of rehabilitation or lack thereof”) did not assist Mr. De Oliveira Miranda in Ms. Abel’s estimation because he did not show any signs of rehabilitation. On direct examination, Ms. Abel agreed that with the suggestion that he “did not participate in the completion of the DCF investigation.” (Testimony). In her report, Ms. Abel states that it is “unclear if Mr. De Oliveira Miranda continued to work with the department to correct the concerning issues that led to this Support decision.” (Exhibit 1).

35. The eighth factor (“Other relevant information, including information submitted by the candidate”) involved Ms. Abel’s consideration of his personal statement and the reference from his landlady. (Abel Test.).

36. Weighing the eight factors, Ms. Abel determined that Mr. De Oliveira Miranda was “not suitable.” This determination was reviewed and approved by Ms. Abel’s supervisors. (Abel Test.). The names, titles, and backgrounds of the supervisors are

not in the record.

37. The EEC informed Mr. De Oliveira Miranda that it had denied “discretionary approval of the Background Record Check” and that he could file a Notice of Claim requesting an adjudicatory hearing. (Exhibit 2).
38. Mr. De Oliveira Miranda filed a Notice of Claim and requested an adjudicatory hearing. (Exhibit 2).

B. Additional Evidence

39. On the evening on which the children had been left home alone, Mr. De Oliveira Miranda’s daughter was in bed watching television. His son was asleep next to her in the bed. (De Oliveira Miranda Test.).
40. His daughter had a cellphone during this time period. (De Oliveira Miranda Test.).
41. As he left, Mr. De Oliveira Miranda told his neighbor, who has a key to the apartment, that he would be going to CVS. His daughter knows the neighbor. (De Oliveira Miranda Test.).
42. Mr. De Oliveira Miranda went to CVS to get Tylenol. (De Oliveira Miranda Test.).
43. Mr. De Oliveira Miranda was gone for no more than thirty minutes. (De Oliveira Miranda Test.).
44. While Mr. De Oliveira Miranda was out, his daughter spoke with Ms. Dos Santos on the telephone. Ms. Dos Santos told her that her father should not have left her alone and that she should call the police. (Daughter Test.).
45. By the time Mr. De Oliveira Miranda returned, the police had already arrived. (De Oliveira Miranda Test.).
46. Mr. De Oliveira Miranda acknowledges that he had made a mistake, noting that the

police officer who had responded to the scene advised him that the issue with leaving the children home alone was the possibility of an emergency situation. (De Oliveira Miranda Test.).

47. I find that in deciding to make the trip to CVS, Mr. De Oliveira Miranda had considered, among other things, the amount of time he expected the trip to take, the fact that his son was asleep, the fact that his neighbor knew he had stepped out and had a key to his home, and his belief that his daughter was “a mature eight-year-old child.” (De Oliveira Miranda Test.).
48. Mr. De Oliveira Miranda’s and Ms. Dos Santos’s divorce was finalized in Brazil. (De Oliveira Miranda Test.).
49. For the past year, the children have been in Mr. De Oliveira Miranda’s physical custody.⁹ When he is working, his fiancée watches the children. (De Oliveira Miranda Test.).
50. After the divorce, things have become more peaceful and stable. (De Oliveira Miranda Test.).
51. Ms. Dos Santos has not seen her children for nearly one year. (De Oliveira Miranda Test.).
52. I find that there was a period during which Mr. De Oliveira Miranda’s relationship with his daughter was strained, but that it has greatly improved. (De Oliveira Miranda Test.; Daughter Test.). Some of the earlier tension appears to have arisen because Ms. Dos Santos told her daughter that her father was a “bad guy.” (Daughter

⁹ The separation agreement contemplates each parent having the children on alternate weeks, but the children have remained with Mr. De Oliveira Miranda full time.

Test.).

53. I credit Mr. De Oliveira Miranda's testimony to the effect that he welcomed DCF investigators when they wished to make home visits. (De Oliveira Miranda Test.).¹⁰ I cannot, on this record, assess why Mr. De Oliveira Miranda did not answer the door for the scheduled July 20, 2022 home visit described in the 51B report or why he did not return a voicemail from the DCF investigator, except to note that I find it unlikely that either resulted from an uncooperative attitude on the part of Mr. De Oliveira Miranda.

54. I credit the testimony of Mr. De Oliveira Miranda's daughter that her mother, on at least some occasions, encouraged her to say negative things about her father to third parties. (Daughter Testimony). I make no findings on how often this occurred. On this record, I make no findings, one way or another, on whether Ms. Dos Santos encouraged her daughter to say things about her father that Ms. Dos Santos knew to be untrue.

CONCLUSION AND ORDER

Mr. De Oliveira Miranda appeals the EEC's determination that he is not a "suitable" "family childcare candidate." For the reasons set forth below, I recommend that the EEC, in its final agency decision, find Mr. De Oliveira Miranda suitable.

¹⁰ In addition to Mr. De Oliveira Miranda's testimony, my conclusion is based on the following: (1) at the hearing, Mr. De Oliveira Miranda made what I took to be an offer to EEC counsel to review his text communications with the DCF investigator; (2) his sole question/comment to Ms. Abel on cross-examination concerned his willingness to "open the doors" to investigators; and (3) with the exception of occurrence of the July 20, 2022 home visit and an unreturned telephone call, the 51B report portrays Mr. De Oliveira Miranda as cooperative.

Under EEC regulations, the term “family childcare candidate” includes an individual seeking a license to open a family childcare program, as well as “household members” who are 15 years of age or older, regardless of whether they are on the premises during childcare hours. 606 CMR 14.04. Here, because Mr. De Oliveira Miranda’s fiancée proposes to open a family childcare program, and he is a member of her household, he is a “family childcare candidate.”

The supported neglect allegations against Mr. De Oliveira Miranda contained in the 51B report are discretionary disqualifications, subjecting him to the EEC’s review process. 606 CMR 14.04.

Under the EEC’s review process, Mr. De Oliveira Miranda must present “clear and convincing evidence demonstrating [his] suitability ... in light of the concern for children’s safety.” 606 CMR 14.12(e).

In determining his suitability, “due weight” must be given to the following factors:

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).

Accordingly, Mr. De Oliveira Miranda must present clear and convincing evidence of his suitability “in light of the concern for children’s safety.” 606 CMR

14.12(e). The determination of whether he has done so must be made in light of the factors enunciated in 606 CMR 14.12(2)(f), giving these factors “due weight.”

The EEC’s concerns about Mr. De Oliveira Miranda can be organized into two general categories: (1) his decision to leave his eight-year-old child and two-year-old child home alone; and (2) concerns relating to the instability of his children’s homelife during the relevant period. These concerns will be addressed below.

A. Leaving the Children Home Alone

At the hearing, Ms. Abel testified that Mr. De Oliveira Miranda’s decision to leave the children home alone constituted “flawed judgment” in the context of caring for children, giving rise to a concern that he would exercise similarly flawed judgment in the future. Ms. Abel also acknowledged, however, that Mr. De Oliveira Miranda is not expected to provide care to children in the family childcare context.

If Mr. De Oliveira Miranda will not be responsible for caring for children under an EEC licensee’s supervision, concerns about the judgment he has displayed in the past with respect to the care of children is of limited relevance to his “suitability.” At the very least, the connection between that prior exercise of flawed judgment and the safety of children for whom he is not expected to provide care requires some explanation.¹¹

Even if a candidate is not going to be providing care for children, incidents in his or her record may call into question whether children may be safely cared for at a family

¹¹ The fourth 606 CMR 14.12(2)(f) factor is “Relationship of the incident(s) to the ability of the candidate to care for children.” Read too literally, this factor would not have any bearing on a candidate who is not going to be caring for children. I believe a more sensible construction, in this context, is that this factor is concerned with the relationship between the potentially disqualifying incident(s) and the well-being and safety of children in an EEC-licensed home childcare program.

childcare program located at the candidate's residence. For example, prior neglect of a child based on a failure to adhere to basic fire safety could reasonably prompt concerns that the individual might imperil children under a licensee's care -- even if he or she does not provide care.

Here, however, it is difficult to understand what harms or general categories of harms to children under a licensee's care are potentially implicated by Mr. De Oliveira Miranda's flawed decision to leave his children home alone. After all, Mr. De Oliveira Miranda is not being called upon to make childcare judgments, let alone judgments about the amount of supervision children in his fiancée's care might require. Nor does the record suggest that Mr. De Oliveira Miranda's judgment is so errant that his mere proximity to children under the care of an EEC licensee would pose concerns for their well-being or safety.

Turning to the 606 CMR 14.12(2)(f) factors, as the discussion above indicates, the relationship between the incident in question and concerns for child safety (factor four) is tenuous at best. That might not be dispositive in all cases. I assume, for purposes of this decision, that an incident could be so serious in nature that it should be disqualifying -- even if it is difficult to articulate its relationship to childcare or child safety. But Mr. De Oliveira Miranda's decision to leave his children home alone, although arguably serious (it would be concerning conduct by a prospective licensee actually expected to make childcare decisions), is not an offense that, absent some colorable connection to the safety of children for whom he is not providing care, it should debar Mr. De Oliveira Miranda from coexisting on the same premises as a family childcare program.

The remaining factors are not particularly supportive of Mr. De Oliveira Miranda candidacy. In particular, Ms. Abel correctly observes that Mr. De Oliveira Miranda was an adult capable of making adult decisions when the incident occurred and that little time has passed that would allow for further maturation. As for rehabilitation, there was little in the record before Ms. Abel that indicated rehabilitation.¹² Some testimony bearing on rehabilitation was presented at the hearing – Mr. De Oliveira Miranda acknowledged his mistake and indicated some understanding of why he should not have left his children home alone. This is not particularly robust evidence.

Nevertheless, lackluster evidence of rehabilitation by a household member candidate is of limited significance where the conduct giving rise to the need for rehabilitation does not, given the household member's rather limited role, implicate child safety concerns.

B. Concerns About Unstable Family Situation

The second set of concerns relate to the unstable family situation reflected in the 51B report.

As an initial matter, the instability depicted in the 51B report occurred at what must have been a time of considerable stress and strain for Mr. De Oliveira Miranda and Ms. Dos Santos. They were estranged, had an infant (just over one month old at the commencement of the DCF investigation) who had been hospitalized, and Mr. De Oliveira Miranda was involved in a relationship with another woman with whom he had

¹² I am referring here specifically to rehabilitation as it pertains to the decision to leave the children home alone. As noted above, the changes in Mr. De Oliveira Miranda's family situation have removed the dynamics that led to the concerns over familial instability. Whether that should be categorized as "rehabilitation" or viewed in some different fashion is not clear.

had a child. As noted above, I credit Mr. De Oliveira Miranda's testimony that things became calmer after the couple's divorce. And there is no indication that any concerning events or circumstances occurred after the period of the DCF investigation. In other words, the instability depicted in the DCF report appears to have been situational, the product of trying circumstances. The De Oliveira Miranda - Dos Santos household would have been a concerning location for a family childcare program because it was burdened with instability. There is no reason to believe that the home shared by Mr. De Oliveira Miranda and Maria Louisa, however, is similarly burdened. Accordingly, concerns stemming from a "general lack of stability due to fighting between the parents" are no longer present.

I do not know whether the foregoing considerations would fall under the heading of factor seven (relating to rehabilitation) or factor eight (other relevant evidence). The point remains the same: the potentially concerning instability has ceased and there is no reason to conclude it might reoccur. That being the case, it is not a reason to find Mr. De Oliveira Miranda unsuitable.

Some of the specific concerns mentioned by Ms. Abel during her testimony merit further additional comment.

One matter referenced by Ms. Abel in her testimony were "reports that Mr. De Oliveira Miranda had kicked his wife and the children out of their home on multiple occasions -- at one point leaving them to sleep in a car." The suggestion that Mr. De Oliveira Miranda ever kicked his baby, toddler, and eight-year-old child out of the family home (let alone on "multiple occasions") finds, at best, only tenuous support in the 51B report. The 51B report indicates that Ms. Dos Santos decided to remove the children

from the home on at least two occasions: once because Mr. De Oliveira Miranda left two children home alone and then again when Mr. De Oliveira Miranda obtained a restraining order against her (not against the children, of course). The only support in the 51B report for the suggestion that Mr. De Oliveira Miranda ejected the children from his home is a single remark by Ms. Dos Santos on June 6, 2022 that Mr. De Oliveira Miranda would not allow her and the children back into the house. This assertion does not appear to have been confirmed or investigated by DCF -- perhaps because Ms. Dos Santos and the children had already returned to the home on or before June 8, 2022. And Ms. Dos Santos's assertion is inconsistent with statements from Mr. De Oliveira Miranda in the report that he welcomed having the children in his home. Moreover, it bears mention that the 51B report contains indications that Ms. Dos Santos, who was experiencing very difficult events and circumstances, may not have been a reliable reporter at that time.¹³

Even if Mr. De Oliveira Miranda had at one point said something to Ms. Dos Santos that she interpreted, reasonably or unreasonably, as not wishing to have the children return to the home, this would need to be considered in light of the fact that Mr. De Oliveira Miranda had one or more of his children at home at several points during the

¹³ One example: During the June 8, 2022 home visit, Ms. Dos Santos told the DCF investigator that Mr. De Oliveira Miranda did not pay for anything and did not give her and the children any money. Mr. De Oliveira Miranda responded by showing the investigator bi-weekly Venmo payments to Ms. Dos Santos. Ms. Dos Santos then stated that Mr. De Oliveira Miranda did not give them any food. Mr. De Oliveira Miranda then proceeded to show the investigator the refrigerator and kitchen cabinets that contained, in the investigator's words, "a plentiful amount of food." Ms. Dos Santos responded that the food was for other people and that she and her children were only permitted to have cookies. Mr. De Oliveira Miranda laughed at that suggestion and walked out of the home. (Exhibit 3).

DCF investigation and, by the time of the hearing, had had sole physical custody of all of his children for an entire year.

In sum, the suggestion that Mr. De Oliveira Miranda kicked his recently hospitalized infant, toddler, and eight-year-old daughter out of the family home on multiple occasions is poorly supported by the 51B report and rather implausible in light of the evidence.¹⁴

Ms. Abel correctly notes concerns voiced in the 51B report about Mr. De Oliveira Miranda's daughter's school attendance, but the 51B report does not indicate the extent to which the attendance issues were attributable to Mr. De Oliveira Miranda. They appear to have occurred while his daughter was residing with Ms. Dos Santos. For his part, Mr. De Oliveira Miranda expressed concern about his daughter's school attendance with the DCF investigator. It is possible that Mr. De Oliveira Miranda bore some responsibility for securing the school attendance of a child who was (at the time) residing with her mother, but the 51B report does not shed much light on the matter. Accordingly, it is not clear how the school attendance issue bears on his suitability to be on the premises of a family childcare program.¹⁵

¹⁴ The 51B report does not state that Ms. Dos Santos or the children ever slept in a car. On June 13, 2022, after Mr. De Oliveira Miranda had secured a restraining order, Ms. Dos Santos was asked by the DCF investigator where she and the children would be staying. Ms. Dos Santos replied that she "did not know and that she may be staying in her car" and "needed time to think." Ms. Dos Santos dropped the children off with Mr. De Oliveira Miranda the following day. (Exhibit 3). Although the report does not specify where Ms. Dos Santos and the children stayed on June 13, 2022, it does not state that either Ms. Dos Santos or her children ever slept in the car. Moreover, the report indicates that Ms. Dos Santos and her children had other potential options available to them that evening, including Ms. Dos Santos's sister, who lived in the area.

¹⁵ It may be that this observation was intended only as a concrete example (or consequence) of the overall instability in the family. If so, this instability has abated, as noted above.

Ms. Abel also describes an instance in which Mr. De Oliveira Miranda's daughter told an investigator that she did not feel safe with her father because he was yelling about her mother and about having to take care of her and her siblings. Such behavior, if reflective of the general tenor of Mr. De Oliveira Miranda's interactions with his children, might be concerning in the family childcare context, even if he would not be responsible for providing care, because it could create a disruptive and harmful emotional environment.

I am reluctant, however, to credit in full the hearsay-within-hearsay comments of an eight-year-old child in the midst of family turmoil, particularly in light of my finding that the daughter had been encouraged by her mother to say negative things about her father. Even without any specific direction from her mother, this dynamic may well have colored the daughter's statements to the DCF investigator.

Nevertheless, even if Mr. De Oliveira Miranda became so heated in talking about Ms. Dos Santos and the strains associated with caring for their three children that he frightened his daughter, the evidence suggests that such conduct did not persist and cannot be generalized to his present interactions with his children or to any interactions he would be likely to have in the presence of children under his fiancée's care as a licensed EEC childcare provider.¹⁶

¹⁶ In addition, and as noted above, I have found that his relationship with his daughter has improved. Moreover, from my admittedly limited vantage point, I could discern no traces of family tension or instability in Mr. De Oliveira Miranda's interactions with his daughter, or in his daughter's conduct and demeanor. During the proceedings, his daughter appeared (understandably) bored, but she was patient and well-mannered. Moreover, with the caveat that I do not speak Brazilian Portuguese and am unfamiliar with its prosody, his daughter appeared to testify in a matter-of-fact manner.

For the foregoing reasons, Mr. De Oliveira Miranda has established by clear and convincing evidence that he is suitable to be a household member of a home in which an EEC family childcare program operates. I recommend that the EEC's final agency decision reverse the determination that Mr. De Oliveira Miranda is not a suitable family childcare candidate.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Timothy M. Pomarole

Timothy M. Pomarole, Esq.
Administrative Magistrate

Dated: November 20, 2024