

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Rosanny Peralta,
Petitioner

v.

Docket No. OC-24-0353

Department of Early Education and Care,
Respondent

Appearance for Petitioner:

Rosanny Peralta, *pro se*

Appearance for Respondent:

Ryan J. Foreman, Esq.

Administrative Magistrate:

Kenneth J. Forton

SUMMARY

Family childcare provider appeals a decision by the Department of Early Education and Care (EEC) to deny her application for licensure as a family childcare provider. EEC concluded that she was not suitable for licensure because she lacked the good judgment necessary to operate a family childcare program. However, a preponderance of the evidence demonstrates that the provider has exercised good judgment since her license was revoked in 2017 and has established her suitability to be a licensed family childcare provider.

RECOMMENDED DECISION

Petitioner Rosanny Peralta appeals from Respondent Department of Early Education and Care's May 9, 2024, decision to deny her a Family Day Care License. *See* 102 CMR 1.08(2)(a). I held a hearing via WebEx on November 7, 2024. EEC called one witness to testify, EEC Regional Director Marisol Rosado-Ledoux. Ms. Peralta testified

on her own behalf and called two additional witnesses: Diana Gomez, Ms. Peralta's former classmate and colleague, and Nichole S. Gonzalez, a parent whose children attended Ms. Peralta's daycare. I entered 14 exhibits into evidence. (Exhibits 1-14.) The parties filed post-hearing closing arguments. The administrative record closed on December 13, 2024, upon the receipt of the Respondent's brief.

FINDINGS OF FACT

Based on the evidence presented by the parties, I make the following findings of fact:

1. Rosanny Peralta was a licensed family childcare provider from September 17, 2015, until March 31, 2017. She ran her program in her home in Hyde Park. (Ex. 4.)
2. Brayan Martinez is the father of Ms. Peralta's two children. (Peralta Testimony.)
3. In 2017, Quincy Police observed Mr. Martinez frequently entering and exiting Ms. Peralta's property and took note that his car was regularly outside her home early in the morning and at night. (Exs. 3, 4.)
4. On March 30, 2017, Ms. Peralta's home was subject to a search warrant because Mr. Martinez was suspected of dealing drugs. No drugs were found in Ms. Peralta's home. Several additional properties were searched, including Mr. Martinez's mother's residence, because the police were unsure where he resided. Mr. Martinez was arrested and charged with trafficking Class B fentanyl and conspiracy to violate drug laws. (Exs. 1, 2, 3.)
5. Ms. Peralta continues to insist that she had no knowledge of the drug trafficking operation. (Peralta Testimony.)

6. On March 31, 2017, EEC notified Ms. Peralta that she must close her family childcare program pending an EEC investigation. (Ex. 4.)

7. On April 26, 2017, EEC released its investigation report determining that Mr. Martinez was “regularly on the premises” of Ms. Peralta’s home. In a prior decision, DALA affirmed this conclusion after Ms. Peralta appealed. This determination was based on reported surveillance by Quincy police, the execution of a search warrant, and documents belonging to Mr. Martinez being found in her home during the search. Ms. Peralta continues to assert that Mr. Martinez was not regularly on the premises because he was only present in the mornings to drive her older son to school and at night to watch their children while she attended school. (Exs. 1, 4; Peralta Testimony.)

8. On July 26, 2017, EEC revoked Ms. Peralta’s license for having a person regularly on the premises who has a disqualifying background, failing to submit a background record check for a person regularly on the premises, engaging in behavior that showed poor judgment, and providing false and misleading statements to an EEC licensor. (Ex. 4.)

9. Ms. Peralta appealed. DALA affirmed EEC’s revocation of her family childcare license. (Ex. 5.)

10. On November 3, 2023, Ms. Peralta met with an EEC licensing team including the Regional Director of Licensing Marisol Rosado-Ledoux, supervisor Arlene Ford, and licensor Antoinette Medley, to discuss the steps necessary to apply for a new family childcare license. Ms. Rosado-Ledoux alleged that Ms. Peralta was evasive when answering questions about Mr. Martinez and the 2017 event. (Ex. 5; Rosado-Ledoux Testimony.)

11. On February 15, 2024, Ms. Peralta re-applied to become a Family Child Care licensee. She attached the following documents to her application: 1) a signed medical form; 2) a copy of her CPR and First Aid certifications; 3) a copy of her Essentials training; and 4) two certificates for “Training 1” and “Training 2.” (Ex. 5.)

12. When considering Ms. Peralta’s application, EEC additionally evaluated the following documents: 1) a Quincy Police Department Report regarding the search of Ms. Peralta’s home in 2017 (Ex. 3); 2) the Order to Protect Children: Notice of Revocation, Notice of Sanctions, and Notice of Intent to Fine from 2017 (Ex. 4); 3) EEC’s Investigation Report from 2017 (Ex. 1); and 4) EEC’s Non-Compliance Report from 2017 (Ex. 2). (Ex. 5.)

13. On May 2, 2024, EEC concluded that Ms. Peralta was not suitable to receive the license. (Ex. 5.)

14. EEC refused to issue Ms. Peralta a license because she “lacks the good judgment necessary to operate a family childcare program.” EEC expressed that she exercised poor judgment when she “decided to evade answering questions posed by the EEC licensing team concerning the 2017 incident,” and when she allowed Mr. Martinez to “conduct drug deals out of her child care home.”¹ EEC explained that Ms. Peralta did not provide any information to indicate that the reasons for revoking her license in 2017 were untrue, nor did she “explain how her life has changed since her license was revoked,” or take responsibility for what happened. EEC concluded that there is no evidence that Ms. Peralta’s judgment has improved. (Ex. 5; Rosado-Ledoux Testimony.)

¹ Ms. Peralta adamantly denies this claim. While there is ample evidence that Mr. Martinez had been in the residence on numerous occasions, there is no evidence that he conducted drug deals out of it.

15. Ms. Rosado-Ledoux explained that her recommendation to deny Ms. Peralta's license application was influenced by her interview with Ms. Peralta when she was evasive in answering questions about Mr. Martinez and the fact she did not provide information on how her circumstances have changed. Ms. Rosado-Ledoux additionally stated that when she asked Ms. Peralta about her current relationship with Mr. Martinez, she explained that she had no contact with him and did not know where he was. Ms. Rosado-Ledoux believed Ms. Peralta was dismissive of the "seriousness" of her actions in 2017. (Rosado-Ledoux Testimony.)

16. On May 9, 2024, Ms. Peralta timely filed a Notice of Claim with EEC. She denied EEC's conclusions about the 2017 incident, explaining that she immediately contacted EEC right after the police searched her home and was always transparent and cooperative. She stated she was never arrested or charged with a crime because she was not aware it was happening and believed she had been judged and punished for a situation she had no control over. She is no longer in contact with Mr. Martinez. She explained that this situation has brought her a "great deal of stress, pain, and suffering" and as the sole provider for her children it has been challenging working multiple jobs while also managing her children's schedules. She hopes to reopen her daycare so she can more easily take care of all her children's needs. (Ex. 14.)

17. Documents attached to the Notice of Claim included a letter from Eversource that Ms. Peralta has been a customer since September 1, 2021 and a similar letter from National Grid, a copy of Mr. Martinez's driver's license issued in 2022 that lists his address in Marlborough, Massachusetts, a copy of Mr. Martinez's marriage license to another woman dated May 13, 2024, and Mr. Martinez's 2024 tax bill. Ms. Peralta received these documents from Mr. Martinez's mother and her children's

grandmother, who offered to help her apply to get her license back. (Ex. 14; Peralta Testimony.)

18. The Eversource bill was dated 2021 because Ms. Peralta no longer lives in Hyde Park. She moved to Dorchester, Massachusetts as of September 1, 2021. (Peralta Testimony.)

19. Ms. Peralta subsequently submitted three recommendation letters, her completed CORI with no past convictions, her diploma and transcript for massage therapy training, her diploma and transcript for a medical assistant program, and her resume. (Exs. 8, 11, 12, 13.)

20. On October 10, 2024, Diana Gomez wrote a recommendation letter in support of Ms. Peralta re-opening her daycare. She met Ms. Peralta through the medical assistant program, and they worked together in a medical facility. She described Ms. Peralta as someone who is “kind to everyone” and would “pull herself out of the dirt to provide for her and her children.” She also testified that Ms. Peralta is a hard-working single mother. Ms. Gomez was not aware of Ms. Peralta’s past relationship with Mr. Martinez. (Ex. 6; Gomez Testimony.)

21. On October 15, 2024, Nichole S. Gonzalez wrote a recommendation letter in support of Ms. Peralta re-opening her daycare. Ms. Gonzalez is the mother of a child who attended Ms. Peralta’s daycare in 2017. She wrote “[Ms. Peralta’s] daycare felt like family” and “she would return back . . . if [Ms. Peralta] is given the chance to reopen.” She additionally testified that Ms. Peralta was one of the best childcare providers she has had. She stated that she never saw or met Mr. Martinez when picking up or dropping off her children. (Ex. 6; Gonzalez Testimony.)

22. On October 18, 2024, Ms. Peralta's mother, Melania Mejia-Pimental, wrote a recommendation letter arguing that Ms. Peralta is being punished for Mr. Martinez's actions. She stated that "the parents of the children she took care of are . . . still calling her to ask when she will be operating again." She explained that Ms. Peralta has experienced stress, pain, and suffering from losing her license. (Ex. 6.)

23. Mr. Martinez is no longer in Ms. Peralta's or her children's lives anymore. The electricity bill that was paid by Mr. Martinez is now in Ms. Peralta's name, and Mr. Martinez has married someone else. (Ex. 14; Peralta Testimony.)

24. There is no evidence of, or reason to believe that, Mr. Martinez has been on the premises after the events of 2017. (Ex. 14; Peralta Testimony.)

25. Since Ms. Peralta's license was revoked, she has worked several jobs. Throughout the last eight years she has continuously driven for Uber and Lyft. In 2018, she started going to school at Lincoln Technical Institute to become a medical assistant and after completing her degree she started working at a medical facility. At one point she was working simultaneously at the medical facility, Domino's Pizza, and for Uber and Lyft. She stopped working at the medical facility because she needed more flexibility in her schedule to take care of her kids. In 2022, she went to massage therapy training but could not continue working in this profession because of arthritis in her spine from constantly driving. (Peralta Testimony.)

26. Ms. Peralta emphatically explained that she hopes to reopen her daycare so she can have flexibility in her job schedule to be there for her kids. She explained that she tries her best as a single mother to provide for her children. She volunteers to chaperone school field trips, she attends their sporting events, and makes sure to read to

her younger child who struggles with reading on his own. She is asking for a chance because she has worked “really hard for this license.” (Peralta Testimony.)

CONCLUSION AND RECOMMENDATION

A childcare provider applicant bears the ultimate responsibility for complying with the specific requirements EEC sets for licensure. *See* 606 CMR 7.00. The application requires “evidence of the applicant’s compliance with the requirements of 102 CMR 1.05(1),” which states that any applicant and any person regularly on the premises when the family day care is operating shall have a background free of conduct that adversely effects an applicant’s ability to care for children. 606 CMR 7.03(1)(c); 102 CMR 1.05(1). Additionally, licensees must “exercise good judgment at all times.” 606 CMR 7.09(8). An applicant whose license was revoked shall be eligible for a new license if she can demonstrate a significant change in circumstances. 102 CMR 1.07(4)(b)(2).²

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 who has not complied with its regulatory requirements nor can it re-issue a license after revocation if the applicant has not demonstrated a significant change of circumstances. By the same token, if the candidate has complied and provided evidence of a significant change in circumstances, EEC must grant the license.

² 102 CMR 1.07(4)(b)(2) provides: “An applicant or licensee shall not qualify for a license or approval from the Office for five years after a final agency decision to revoke or refuse to issue or renew a license or approval held by the applicant or licensee pursuant to M.G.L. c. 28A or other similar licensing law. Thereafter, an applicant or licensee shall be eligible only if he/she can demonstrate a significant change in circumstances.” Ms. Peralta is eligible to renew her license because it has now been more than five years since it was revoked in 2017.

Here, EEC refused to re-issue Ms. Peralta a license on the grounds that she lacks the good judgment necessary to operate a family childcare program. EEC based its decision on Ms. Peralta previously providing false and misleading information in 2017 about whether Mr. Martinez was a person regularly on the premises, failing to take responsibility for her actions, her alleged evasiveness throughout their meeting, and not providing sufficient information on how her life has changed since her license was revoked. However, a significant amount of time has passed and new evidence is available. Therefore, a fresh appraisal of her circumstances is necessary.

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” should be considered. *DEEC v. Gupta*, OC-23-0396, at *10 (DALA Oct. 18, 2024) (explaining new evidence not previously presented to EEC in its initial review must be considered); *DEEC v. Waller*, OC-23-0266, at *6-8 (DALA Oct. 18, 2024) (reversal requires “new, credible evidence at the hearing that called into question the [EEC]’s evaluation”). At the hearing, Ms. Peralta provided new evidence explaining how her life has been impacted by the license revocation in 2017 and the actions she has taken since then to protect and provide for her family. From the exhibits and testimony provided, I believe Ms. Peralta has demonstrated that she is suitable for a family childcare license. There is nothing in evidence, beyond the incident in 2017, that suggests otherwise.

The evidence submitted after EEC’s decision included three recommendation letters, a CORI form showing no prior charges or convictions, documents proving her schooling, her resume, and proof that her electricity bill is now in her name. Additionally, Ms. Peralta provided convincing evidence that Mr. Martinez has created a new life for himself with a new woman by presenting his license proving that he lives in

a separate town than Ms. Peralta and a marriage license between Mr. Martinez and his wife. These documents had not been submitted to EEC when they reviewed Ms. Peralta's application. I also credit Ms. Peralta's testimony that Mr. Martinez is no longer in her life and is never on the premises of her home, mitigating one of EEC's major concerns about re-issuing her license.

EEC alleges that Ms. Peralta is unfit to run a family childcare facility because of her 'poor judgment,' but from the information provided, Ms. Peralta has exercised nothing but good judgment since 2017. She has gone to school to be a medical assistant and a massage therapist and drives for Uber and Lyft, despite her back pain, to support her children. She has removed Mr. Martinez from her children's lives since his arrest and actively tries to be the best parent she can be. She works every day while also chaperoning field trips and attending her children's extracurricular activities. Ms. Peralta's impassioned testimony demonstrated her love for her children and how much she cared about re-opening her business. The actions she has taken since 2017 do not depict someone who exercises poor judgment.

Nichole Gonzalez's and Diana Gomez's testimony and recommendation letters portray Ms. Peralta as a person who is more than suitable to run a family daycare program. Ms. Gonzalez, whose children attended Ms. Peralta's daycare, stated that "she would return back . . . if [Ms. Peralta] is given the chance to reopen." She additionally testified that Ms. Peralta was one of the best childcare providers she has had. Diana Gomez, Ms. Peralta's former classmate and colleague, described Ms. Peralta as someone who is "kind to everyone" and would "pull herself out of the dirt to provide for her and her children." Ms. Gonzalez's testimony and letter are particularly convincing of Ms. Peralta's suitability given her first-hand experience with Ms. Peralta's daycare.

Ms. Peralta also testified to how her life has been altered since her license was revoked in 2017, explaining the considerable impact it has had. She stated that this situation has brought her “stress, pain, and suffering.” She has had to work two jobs or more to make ends meet. She is the sole provider for her children and hopes that by reopening her day care she can better manage her and her children’s schedules. Ms. Peralta is a hardworking mother who has nothing in her own background suggesting that she is incapable of running a family daycare program. Ms. Peralta should not be continuously punished for the actions of her children’s father.

I conclude that Ms. Peralta has established her suitability to be licensed as a family childcare provider by demonstrating a significant change in circumstances since her license was revoked and complying with EEC’s requirements for licensure. Considering how forthcoming Ms. Peralta has been in the hearing on this matter, I do not find it credible that she was evasive during her initial meeting with EEC.

Accordingly, I recommend that EEC reverse its decision and grant Ms. Peralta’s application for licensure.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

Kenneth J. Forton
Administrative Magistrate

DATED: April 9, 2025