

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

Middlesex, ss.

Y.A.,
Petitioner,

Docket No.: OC-25-0402

v.

Department of Early Education and Care,
Respondent.

Appearances:

For Petitioner: Y.A., pro se
For Respondent: Leah Potash, Esq.

Administrative Magistrate:

Eric Tennen

SUMMARY OF RECOMMENDED DECISION

The Department of Early Education and Care (EEC) denied the Petitioner's application for a family childcare license because it found her husband, a household member, was not qualified. The decision was based on 2015 criminal convictions related to the unlawful possession of a firearm. EEC's main concern in its review was whether any firearms would be present in the home. While EEC had no information about this during the discretionary review process, new evidence at the hearing confirmed there have not been any firearms at the home since the conviction over 10 years ago, and none are likely to be present in the future. Accordingly, EEC should reconsider its decision and find the Petitioner's husband is a suitable household member.

INTRODUCTION

The Petitioner timely appeals a decision by the Department of Early Education and Care ("EEC" or "the Department") denying her application for a family daycare license. I conducted a virtual hearing on November 10, 2025. The Department presented one witness, Edward Riggs, a

background check reviewer. The Petitioner and her husband also testified.¹ I entered exhibits 1-13 into evidence. The parties submitted closing arguments at which point I closed the administrative record.

FINDINGS OF FACT

1. The Petitioner, Y.A., applied for a family daycare license in 2024. (Y.A.)
2. As part of that process, she and all household members are subject to a background check. (Riggs.)
3. Some prior conduct is automatically disqualifying. 606 Code of Mass. Regs. § 14.10(1). Other prior conduct may trigger a presumptive or discretionary review process. *Id.* at §§ 14.10(2) & (6). (Riggs.)

Criminal case

4. As part of the Petitioner's background review, EEC found information that triggered its review process. In 2015, her husband was convicted of two offenses: possession of a firearm without a license and discharging a firearm within 500 feet of a building. He was charged with other offenses that were ultimately dismissed. (Ex. 5.)
5. According to the police report, in response to a shot spotter, officers went to a parking lot. Upon arrival, they saw two cars, both occupied with various people. (Ex. 4.)
6. The Petitioner's husband was in one car in the driver's seat. The police saw him drop

¹ Because this case involves criminal convictions and charges, all of which have been sealed, I issued a separate order impounding the exhibits and allowed the Petitioner to proceed under a pseudonym: Y.A. As a result, I am not going to use her or her husband's names.

his hands out of sight and lean towards the glove box. They eventually placed him into custody. When they searched the glove box, they found a gun. (Ex. 4.)

7. As noted, he was charged with various offenses. Some were dismissed but he pled guilty to two. (Ex. 5.)
8. He was sentenced to 18 months in the house of correction and was incarcerated from April 2015 until October 2016. (Exs. 5 & 11.)
9. In 2019, the dismissed charges were sealed by court order pursuant to G.L. c. 276 § 100C. His convictions were recently sealed in October 2025 by the Massachusetts Probation Services pursuant to G.L. c. 276 § 100A. (Exs. 5 & 13.)

Discretionary review process

10. After being notified of the department's review, the Petitioner submitted additional documents: a candidate statement and several letters of support. (Exs. 2, 6-10, & 12.)
11. In his statement, the husband wrote that he was out with the Petitioner that night. He left the restaurant to go out and check if he had locked the car. Once out there, he noticed a gun on the ground next to his tire. There were police officers around, and he was worried they would think the gun was his if they saw it, so he took it and put it in his glove compartment. Later, they drove somewhere else. It was there that the officer responded to the shot spotter and found the gun in his glove compartment. (Ex. 2.)
12. Once the application is complete, the EEC reviewer—here Mr. Riggs—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.

(Riggs.)

13. At the hearing, Mr. Riggs explained how he reviewed and weighed each factor. He noted that the candidate's age at the time of the offense, 30, and the number of offenses were "concerning." The seriousness and circumstances of the events "weighed heavily." On the other hand, he thought the candidate had positive reference letters and he followed through with all court orders. It was also positive that he had no criminal entries since 2013. Finally, he acknowledged the candidate took responsibility by pleading guilty. (Riggs.)
14. While Mr. Riggs commented briefly on each factor, he did not provide a particularly insightful or helpful explanation for how he weighed the factors and what was ultimately the tipping point. (Riggs.)
15. However, he did provide helpful information when asked what more he was looking for, given that the events were over 10 years old. Mr. Riggs explained that he was looking for reassurance that there were no firearms in the house and none likely to ever be present. (Riggs.)
16. He also explained that he considers the role the candidate has in relation to the daycare, e.g. providing direct care to children, simply being present on the premises,

etc. Here, he had no information one way or the other so he could not factor that in. (Riggs.)

Additional information from the hearing

17. At the hearing, the Petitioner and her husband provided additional information. The Petitioner's husband has been employed and active in the community since his release from prison. He has worked full-time selling car parts for the last 5-6 years. He typically works Tuesday through Saturday. (Y.A.; Husband.)
18. They are very involved in their church and do some evangelical work in the community. (Petitioner.)
19. The Petitioner's husband would support his wife with her daycare however he could. It is clear he would not provide direct care to children. But he could be around the premises on Mondays, when he is not working. (Y.A.)
20. Both denied there are any firearms in their home now. In fact, there have not been any in their home since the criminal case. And they both affirmed there would not be any firearms there in the future. (Y.A.; Husband.)

DISCUSSION

When an applicant has a potentially disqualifying background, EEC conducts a review to determine whether to grant or deny a childcare license. *See* 606 Code of 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." 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.

EEC's background check process is detailed. A common disqualifying event is a prior criminal conviction. *See, e.g., EEC v. Aguilar*, OC-23-0251, at *9, 2023 WL 9022704 (Div. Admin. Law Apps. Dec. 21, 2023), *citing* cases. The conviction itself is typically enough corroboration that the conduct occurred. *Id.* Here, not only is there a conviction, but the Petitioner's husband pled guilty to the offenses, i.e. he admitted the conduct alleged. Once it confirmed the conduct, EEC had to consider if the incident directly relates to EEC's core mission of assuring the safety of children in the care of others. Mr. Riggs explained that his concern was that firearms might be present in the daycare facility, because that understandably creates a risk to children. The application process did not provide the applicant with a chance to respond to that and thus Mr. Riggs could not rule it out. Mr. Riggs thought that was reason enough to deny the application.

"That said, I may 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 EEC." *EEC v. Berroa-Abad*, OC-25-0009, at *7, 2025 WL 2365553 (Div. Admin. Law Apps. Aug. 6, 2025). The convictions here are over 10 years old (and the conduct itself almost 12 years old). The Petitioner's husband has steered his life in the right direction after his release from prison. He has not had any other criminal charges, he works full-time, and he and his wife are very

involved in their church community. At some point, the passage of time alone should be enough to warrant a finding that he is qualified. *See EEC v. Aguilar*, OC-23-0251, at *9, 2023 WL 9022704 (Div. Admin. Law Apps. Dec. 21, 2023). Without deciding how much time is enough to leave the past in the past, the Petitioner and her husband provided credible evidence to assuage Mr. Riggs' main concern about whether there might be firearms in the home today. I credit their testimony that there have not been firearms present since the charges, there are not any now, and there will not be any in the future. That, coupled with the fact the Petitioner's husband will not play a role in the direct care of the children, is enough to find the Petitioner has proven by clear and convincing evidence that her husband is a suitable household member.

CONCLUSION AND RECOMMENDED ORDER

I recommend EEC's decision be reversed and it find the Petitioner's husband is a qualified household member.

SO ORDERED.

Date December 9, 2025

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

Eric Tennen
Administrative Magistrate