**COMMONWEALTH OF MASSACHUSETTS**

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| Suffolk, ss. | **Division of Administrative Law Appeals** |
| **Department of Early Education and Care,** Petitioner v.**Marisol Carvajal-Rojas,** Respondent | Docket No. OC-17-754 |

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| **Appearance for Petitioner**:Denise J. Karlin, Esq.Department of Early Education and Care51 Sleeper Street, Fourth FloorBoston, Massachusetts 02210 |
| **Appearance for Respondent** |

*Pro se*

94 Francis Street, Apt. 1

Everett, Massachusetts 02149

**Administrative Magistrate**:

Bonney Cashin

**Summary of Recommended Decision**

The EEC’s decision to deny Marisol Carvajal-Rojas’s request for discretionary approval for a renewal of a family child care license pursuant to 606 CMR 14.14(3) is supported by a preponderance of the evidence. A Department of Children and Families background check revealed two supported findings of domestic violence against an adult member of her household.

**RECOMMENDED DECISION**

On August 4, 2017, the Department of Early Education and Care (“EEC”) refused to renew Marisol Carvajal-Rojas’s family child care license after it denied an Application for Discretionary Approval concerning Edwin Ruiz. Ms. Carvajal-Rojas filed a timely claim for an adjudicatory hearing.

 I held a hearing on November 16, 2017 at the office of the Division of Administrative Law Appeals, located at One Congress Street in Boston, Massachusetts. An interpreter was available telephonically for Ms. Carvajal-Rojas. The parties stipulated to the admissibility of six documents. (Exs. A-F). I admitted EEC’s August 4, 2017 decision as Ex. G. I digitally recorded the hearing. Ms. Carvajal-Rojas testified on her own behalf. The EEC called Robin Lalancette, EEC Background Record Check Specialist.

**FINDINGS OF FACT**

Based on the testimony provided and other evidence in the record, I find the following:

1. In 2013, Marisol Carvajal-Rojas was granted a family child care educator license for her home. In 2017, she applied to renew her license. A background record check is part of the application and renewal process. (Exs. A, C).

2. Edwin Ruiz lives with Ms. Carvajal-Rojas, and they have two children together. As a member of her household, he was subject to a background check.[[1]](#footnote-1) (Exs. A, C).

3. Edwin Ruiz is the subject of a 2007 51B report for neglect. [[2]](#footnote-2) An assault and battery charge is on his Criminal Offender Record Information (“CORI”) from the same year.[[3]](#footnote-3) The victim was his ex-wife. (Exs. A, B, C, D).

4. Both the 2007 51B report for neglect and the assault and battery charge stem from a domestic violence incident. Mr. Ruiz physically assaulted his then wife by striking her repeatedly with a closed fist. Both of Mr. Ruiz’s children were present in the home during the time of the assault. (Exs. A, C, D).

5. When Ms. Carvajal-Rojas applied for her license in 2013, EEC granted discretionary approval to Mr. Ruiz for his disqualifying background for two reasons. First, he had only one 51B report for neglect. Second, Ms. Carvajal-Rojas was not the victim of his domestic abuse. (Exs. A, C).

6. During an October 10, 2014 medical appointment, Ms. Carvajal-Rojas admitted that, three months earlier, Mr. Ruiz had struck her in front of their two children. (Exs. A, D).

7. On November 3, 2014, the Department of Children and Families (“DCF”) informed Mr. Ruiz that it would issue a supported finding of neglect of his children due to his domestic violence incident with Ms. Carvajal-Rojas. On March 31, 2015, DCF closed its case concerning Mr. Ruiz. (Exs. D, F).

8. By letter dated November 14, 2016, the EEC Background Record Check Unit notified Ms. Carvajal-Rojas that she may be disqualified from holding a family child care educator license based on Mr. Ruiz’s DCF Background History, which now included two allegations of neglect, each supported in a 51B report. (Ex. B).

9. When EEC’s discretionary review team, including Ms. Lalancette, met to review Ms. Carvajal-Rojas’s application, it considered the following: there was a pattern of domestic violence perpetrated by Mr. Ruiz in front of his children; the Discretionary Approval granted in 2013 involved a woman other than Ms. Carvajal-Rojas; there were two findings of neglect under extremely similar circumstances; the matter was extremely serious, as young children witnessed Mr. Ruiz’s violence against their mothers; Mr. Ruiz’s conduct is directly related to the ability of Ms. Carvajal-Rojas to provide safe child care; there is no guarantee that Mr. Ruiz will be outside of the home during child care hours; Mr. Ruiz was only 24 years old at the time of his first DCF neglect support, but he was 31 years old at the time of the second neglect support; and Mr. Ruiz has shown no evidence of rehabilitation, such as completing anger management classes. (Exs. A, C; Testimony Lalancette).

10. On July 26, 2017, EEC denied Mr. Ruiz’s request for discretionary approval. (Exs. A, C).

11. Ms. Carvajal-Rojas believed that, aside from the two incidents documented in the 51B reports, Mr. Ruiz is a good father, who behaves well in front of his children. She believed she could provide a safe environment for children. (Testimony Carvajal-Rojas).

13. Mr. Ruiz would be at work during child care hours, and he would be able to stay at his mother’s apartment, which is in the same building as his, if he needed to stay home from work. (Testimony Carvajal-Rojas).

14. EEC issued its refusal to renew Ms. Carvajal-Rojas’ family child care educator’s license, based on Mr. Ruiz’s disqualifying background, on August 4, 2017. (Ex. G).

15. Ms. Carvajal-Rojas timely appealed on August 11, 2017. (Ex. E).

**DISCUSSION AND CONCLUSION**

I conclude that EEC’s denial of discretionary approval following a DCF background check and resulting refusal to renew Ms. Carvajal-Rojas’s child care license is supported by the evidence.

Under 102 CMR 1.05(1), “[a]ny…household member…when family day care children are present shall have a background free of conduct which, in the judgment of [EEC], bears adversely upon applicant’s…ability to care for children.” Included in such conduct are “allegations of abuse or neglect of a child, supported in a 51B report.” 102 CMR 1.05(1)(a)(4). Consequently, “[a]n applicant shall not qualify to receive, retain, or have renewed a license if the background of the…household member…is not free from conduct which adversely bears on the provider’s ability to care for children.” 102 CMR 1.05(1)(b).

 All DCF background record check findings other than “no record” are considered “discretionary disqualifications. 606 CMR 14.09(3). Mr. Ruiz and Ms. Carvajal-Rojas submitted additional information relevant to EEC’s discretionary review process. 606 CMR 14.09(3)e.

An EEC discretionary review team met to evaluate the level of risk to children in light of the following factors: time since the incident of neglect occurred; his age at the time the act of neglect occurred; seriousness and specific circumstances of the neglect; relationship of the specific nature of the neglect; the number of neglectful acts; any relevant evidence of changed circumstances, or rehabilitation, or lack thereof; and any other relevant information, including information submitted by the candidate. 606 CMR 14.14(3)(a-g). The discretionary review team gave “due weight” to these factors. In particular, the team focused on the serious risk of harm posed by Mr. Ruiz, as he struck two women, under very similar circumstances, in front of their young children.

 Ms. Carvajal-Rojas testified that Mr. Ruiz is a good father, behaves well in front of their children, and the 51B incidents were the only times he was violent. She also testified that Mr. Ruiz’s work shift will keep him from the home during the hours the daycare would be operating, and that she would be able to provide the security necessary to protect the children at home. Additionally, she testified that if Mr. Ruiz were to be unable to attend work, he could stay in his mother’s apartment. Ms. Carvajal-Rojas was a credible witness. (Ex. F; Carvajal-Rojas Testimony).

The November 3, 2014 supported finding for neglect remains part of Mr. Ruiz’ DCF history, and was subject to examination for the purposes of the EEC discretionary approval. EEC reasonably decided that it was appropriate to review the 2007 supported finding for neglect because of its similarity to the 2014 incident. Without discretionary approval, Mr. Ruiz’ DCF history is serious and provides evidence of ineligibility. EEC has considered all relevant evidence and has concluded that Edwin Ruiz, a household member, has a background that bears adversely on Ms. Carvajal-Rojas’ ability to care for children.

I find that the EEC did not abuse its discretion in reaching its conclusion. I decline to substitute my judgment for that of EEC in the absence of an abuse of discretion. I recommend that the decision of EEC to deny Ms. Carvajal-Rojas’ request for discretionary approval in the renewal of her license as a day care provider be affirmed.

 DIVISION OF ADMINISTRATIVE LAW APPEALS

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 Bonney Cashin

 Administrative Magistrate

DATED: June 29, 2018

1. The record is not clear about whether Mr. Ruiz and Ms. Carvajal-Rojas were married. [↑](#footnote-ref-1)
2. A G.L. c. 119, §51B report details the investigation by DCF after a claim of child abuse or neglect has been reported and includes the investigator’s conclusion whether the allegations are supported or unsupported. [↑](#footnote-ref-2)
3. EEC did not consider the CORI record again when Ms. Carvajal-Rojas sought to renew her license. [↑](#footnote-ref-3)