

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
12 DHR 01338

Patricia Satterwhite,

Petitioner,

v.

Department of Health & Human Services,

Respondent.

**FINAL DECISION**

This matter was heard before the Honorable Donald W. Overby, Administrative Law Judge, on June 28, 2012 in Raleigh, North Carolina.

**APPEARANCES**

For Petitioner:

Patricia Satterwhite  
3113 Rendezvous Drive  
Raleigh, NC 27610

For Respondent:

Alexandra Gruber  
Assistant Attorney General  
N.C. Department of Justice  
9001 Mail Service Center  
Raleigh, NC 27699-9001

**APPLICABLE STATUTES AND RULES**

N.C.G.S. §§ 110-90, 110-98, 110-102.2, 110-103.1, and Child Care Rules 10A NCAC 09 .2203, .2206, and .1716.

**ISSUE**

Whether the Respondent acted erroneously when it issued a written warning and assessed a civil penalty to Patricia Satterwhite, operator of Sesame Daycare Center (Id #92001982).

**EXHIBITS ADMITTED INTO EVIDENCE**

Respondent's Exhibits 2-13 were admitted into evidence. The Court took official notice of the relevant statutes and rules contained in Respondent's Exhibit 1.

## **FINDINGS OF FACT**

**BASED UPON** careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents, exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge (“ALJ”) makes the following Findings of Fact. In making these Findings of Fact, the ALJ has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to the demeanor of the witnesses, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable and whether the testimony is consistent with all other believable evidence in the case.

### **Parties/Witnesses**

1. Respondent, Division of Child Development and Early Education (the “Division”), is an administrative agency of North Carolina State Government operating under the laws of North Carolina and administering the licensing program for child care facilities in the State of North Carolina.

2. The Division has the authority to charge licensed child care facilities an annual license fee pursuant to N.C.G.S. § 110-90(1a).

3. Lisa Lyons is the Licensing Enforcement Program Manager for the Division. Ms. Lyons responsibilities include overseeing the fees charged to licensed child care facilities for licensure.

4. Petitioner Patricia Satterwhite owns and operates Sesame Daycare Center, a family child care home located at 3113 Rendezvous Riverbook II, Raleigh, NC 27610, pursuant to a three-star rated license issued by the Division. (R. Ex. 3)

### **Background**

5. The Licensing Enforcement Program is responsible for maintaining records related to licensing fees and issues administrative actions when those fees are not timely paid.

6. The Division’s 2011 policy regarding timely payment of license fees includes several levels of administrative actions depending upon the facility’s prior payment history. (R. Ex. 2) Facilities who are two-time “repeat” late payers are issued a written warning with a \$200 civil penalty assessed. *Id.*

7. Licensing fees are due on or before November 30 of each year. In order to ensure timely payment of licensing fees, the Division sends child care providers reminder letters, posts information regarding licensing fees on its website, publishes information regarding licensing fees in its newsletters, and makes computer “robo-calls” to facilities who are late in paying.

### **Administrative Action**

8. Petitioner's facility has a maximum capacity of five (5) children. (R. Ex. 3) By law, Petitioner was required to pay a \$52.00 annual licensing fee. (R. Ex. 1)

9. Petitioner paid her 2009 licensing fee approximately four (4) months late. (R. Ex. 4) She was charged a 10% late penalty of \$5.20 that year. *Id.*

10. Petitioner did not pay her 2010 licensing fee on time. On January 18, 2011, in accordance with its policies and procedures, the Division sent Petitioner an "Intent to Revoke & Final Payment Notice," advising Petitioner that if she failed to pay her 2010 licensing fee, her license would be revoked. (R. Ex. 8) Petitioner paid her 2010 licensing fee approximately two months late on January 27, 2011. Petitioner was charged a 10% late penalty of \$5.20 that year. (R. Ex. 4)

11. On September 26, 2011, the Division sent a letter to all facilities who had paid their licensing fees late in the past to remind them that the 2011 licensing fees would be due November, 30, 2011. (R. Ex. 9) That letter included the following language:

Our records show that in the past year your program received an administrative action due to late or non-payment of this requirement annual fee. This letter is a reminder to submit your payment by the deadline this year. If you do not, you will receive additional penalties, interest charges and/or another administration action, up to and including revocation of your license.

*Id.* The letter also included contact information for Nicole Wilson, the Licensing Enforcement Program team member assigned to oversee the license fee process. *Id.*

12. The invoice for Petitioner's 2011 licensing fee invoice was issued on October 17, 2011. (R. Ex. 10) The 2011 invoice was due and payable on November 30, 2011. *Id.* The invoice included another letter which reminded Petitioner that "late or non-payment of the license fee will result in an administrative action taken against your child care facility, up to and including revocation." *Id.*

13. When Petitioner did not timely pay, she was charged a 10% late penalty of \$5.20 on December 13, 2011. (R. Ex. 4)

14. On December 19, 2011, the Division sent Petitioner an Intent to Revoke letter, warning her that it was preparing to revoke her child care license for failing to timely pay the license fee. (R. Ex. 11)

15. When Petitioner still did not pay her license fee, the Division issued an administrative action revoking Petitioner's child care license on January 24, 2012 (the "Revocation"). (R. Ex. 12)

16. On February 1, 2012, Petitioner paid her 2011 license fee. In accordance with its policies and procedures, on February 21, 2012, the Division amended the Revocation to a written warning with a \$200 civil penalty. (R. Ex. 13).

17. Petitioner stated that she was suffering from financial difficulties and just did not have the money to pay the fee initially and does not have the money to pay the civil penalty.

### **CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter of this contested case pursuant to Chapters 110 and 150B of the North Carolina General Statutes.

2. All parties have been correctly designated and there is no question as to misjoinder or nonjoinder and the notice of hearing was proper.

3. At all times relevant to this matter, Petitioner's facility was subject to the child care licensure laws and rules of the State of North Carolina and was licensed by the Respondent as a family child care home.

4. Respondent has the authority to charge licensed child care facilities an annual license fee pursuant to N.C.G.S. § 110-90(1a).

5. Respondent has the authority to issue a written warning to a licensee "to allow the operator an opportunity to demonstrate compliance with all requirements." 10A NCAC 09 .2203(a).

6. Respondent has the authority to levy a civil penalty "against any operator of any child care facility who violates any provision of [the North Carolina Child Care Act, N.C.G.S. § 110-85, *et seq.*]." N.C.G.S. § 110-103.1.

7. Respondent followed its policies and procedures in issuing petitioner a written warning and \$200 civil penalty.

8. Respondent did not act erroneously in issuing petitioner a written warning and \$200 civil penalty.

9. At all times relevant to this matter, Respondent acted as required by law.

10. Respondent did not exceed its authority in issuing a written warning and assessing a civil penalty to Petitioner.

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned makes the following:

### **FINAL DECISION**

The Respondent's decision to issue a written warning and to assess a civil penalty to Petitioner's is **AFFIRMED**. The undersigned further orders as follows:

1. Petitioner shall contact Respondent to arrange a payment plan for the civil penalty issued by Respondent. Petitioner was so advised in open court. In the event that she has not

already contacted Respondent to arrange the payment plan, then she shall do so within thirty days of the date of this Decision.

2. Petitioner shall make all payments under the payment plan in a timely manner;  
and

3. Petitioner shall pay her 2012 license fee in a timely manner.

4. If Petitioner fails to abide by paragraphs 1, 2 and 3 above, Respondent shall immediately revoke Petitioner's license to operate a child care facility.

### **NOTICE**

Under the provisions of North Carolina General Statute 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' Rule, 26 N.C. Admin. Code 03.012, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. §150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 23<sup>rd</sup> day of July, 2012.

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Donald W. Overby  
Administrative Law Judge