

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
441 4th Street, NW, Suite 540-S
Washington, DC 20001-2714
Phone: (202) 727-8280

TRINITY YOUTH SERVICES
Petitioner,

v.

DISTRICT OF COLUMBIA
CHILD AND FAMILY SERVICES AGENCY
Respondent

Case No.: FS-C-08-800010

ORDER

Introduction

In this case, Petitioner Trinity Youth Services (“Trinity”) has requested a hearing at the Office of Administrative Hearings (“OAH”) to review two decisions of the Child and Family Services Agency (“CFSA”). Trinity challenges both a decision of CFSA to stop referring new placements to its group home, and challenges a separate decision by CFSA to place Trinity’s president, Mr. Ashley, on the Child Protection Registry (the “Registry”) compiled pursuant to D.C. Official Code § 4-1301.02 *et seq.* On September 8, 2008, I issued an order that, in relevant part, dismissed for lack of jurisdiction Trinity’s hearing request concerning Mr. Ashley’s placement on the Registry and required the parties to submit additional information necessary to determine whether OAH has jurisdiction over its claim concerning new placements.¹

The parties have filed responses to the September 8 Order with the information required by that Order. In addition, on September 19, 2008, Trinity filed a motion for reconsideration of

¹ The September 8 order also dismissed two other hearing requests filed by Trinity, which are not at issue here.

the dismissal of the claim concerning Mr. Ashley's placement on the neglect registry, and filed a supplement to that motion on October 1, 2008. Based on the materials filed by both parties, this Order dismisses Trinity's claim concerning the placement restriction for lack of jurisdiction and denies the motion for reconsideration.

Background

The September 8 Order concluded that D.C. Official Code § 2-1831.03(a)(5) grants jurisdiction to OAH to conduct a preliminary review hearing whenever CFSA suspends a facility's license, or issues it a provisional or restricted license pursuant to D.C. Official Code § 7-2108(a). The Order further concludes that OAH has no jurisdiction to conduct hearings required or authorized by rules established pursuant to D.C. Official Code § 7-2103(a), because there is no statutory basis for such jurisdiction. The hearing request in this case challenges, in part, a decision of CFSA not to refer additional children for placement. I asked the parties to file additional information because it was not clear from the record in this case whether CFSA issued a restricted license to Trinity. Upon review of the parties' filings in response to that Order, I conclude that CFSA did not issue a restricted license to Trinity and that OAH has no jurisdiction to decide the challenge to CFSA's action. I also conclude that Trinity's motion for reconsideration states no reason for changing the decision concerning Mr. Ashley's placement on the Registry. For those reasons, this case will be dismissed.

CFSA's Decision

CFSA admits that, on June 26, 2008, it temporarily stopped making new placements at Trinity. CFSA asserts that it did so in response to an allegation of neglect occurring at one of

Trinity's facilities.² According to CFSA, its action was not the issuance of a restricted license, but an action required by 29 DCMR 6204.6(e). That section, one of the rules enacted pursuant to the authority contained in D.C. Official Code § 7-2103(a), provides that CFSA must investigate every report of a risk to the health or safety of a resident at a licensed facility, and must not refer any new children to the facility until it completes the investigation. CFSA must complete the investigation within 30 days. 29 DCMR 6204.7. Upon receipt of the report of the investigation, a licensing agency such as CFSA must consider whether to take any action against the facility, including converting the facility's license to a provisional or restricted license, or suspending or revoking the license. 29 DCMR 6204.9.

Thus, the regulations distinguish between an investigation pursuant to 29 DCMR 6204.6 and a *subsequent* decision to issue a restricted license or a suspension of a license as the result of that investigation. A placement restriction pursuant to § 6204.6(e) is not the issuance of a restricted license, and there is no basis in either D.C. Official Code § 7-2108 or any applicable regulation for granting the hearing rights available to the recipient of a restricted license to a facility that has received a § 6204.6(e) placement restriction. Thus, OAH, which only has the authority to hold hearings in cases referred to in § 7-2108, does not have jurisdiction of any challenge to a § 6204.6(e) placement restriction, which is not referred to in that section.

To be sure, the effect of CFSA's placement restriction decision was similar (but not identical) to that of a restricted license. A restricted license:

² Trinity does not deny that this was the reason for CFSA's action. Its response to the September 8 Order identifies CFSA's action as one of a number of "placement restrictions" imposed by CFSA, and distinguishes them from the issuance of a provisional license in December 2006, which is not at issue in this case. Petitioner Trinity Youth Services' Responses to Questions found in the September 8 Order ("Trinity Response") at 1.

prohibits the facility from accepting new residents or providing certain specified services that it would otherwise be authorized to provide, if appropriate corrective actions are not forthcoming.

D.C. Official Code § 7-2107(a)(2).³

A restricted license, therefore, can restrict a facility's right to accept new residents, but it does so only until "appropriate corrective measures" occur. By contrast, a placement restriction does not identify any corrective measures that a facility can take to regain an unrestricted license. Instead, it lasts until an investigation is completed, when the licensing agency may, or may not, take further action against the facility.

Because CFSA's placement restriction was initiated pursuant to 29 DCMR 6204.6, and was not the issuance of a restricted license, OAH has no jurisdiction to hear Trinity's challenge to that restriction.

Placement of Mr. Ashley on the Registry

Trinity also seeks reconsideration of the portion of the September 8 Order dismissing its request for a hearing concerning Mr. Ashley's placement on the Registry. It argues that CFSA's action "restricts Trinity's license as it prohibits the president of Trinity from being employed at his own company . . . and requires a restructuring of staff." Motion for Reconsideration at 2. It may be that CFSA's action restricts Trinity's ability to run its facilities in the way it would like, but that does not make the entry of Mr. Ashley's name on the Registry the equivalent of a restricted license. As discussed above, a restricted license prohibits a facility from accepting

³ CFSA's response erroneously states that issuance of a restricted license would have required removal of all the children already placed at Trinity. CFSA Response at 2. A restricted license, however, allows a facility to continue operating, while restricting either its right to admit new residents or its ability to offer specific services if specified changes do not occur. D.C. Official Code § 7-2107(a)(2).

new residents or from offering specific services until corrective measures are taken. D.C. Official Code § 7-2107(a). Including Mr. Ashley on the Registry does not have either of those legal effects on Trinity.

In it supplement to its motion, Trinity argues vigorously that Mr. Ashley has a right to a hearing, and that CFSA instructed him that he could file a hearing request at the “D.C. Office of Fair Hearings and Appeals.”⁴ Mr. Ashley may well have a right to a hearing. Indeed, CFSA’s own regulations explicitly state that CFSA itself shall grant a hearing to “a person identified in the Child Protection Register who appeals from a finding by CFSA of abuse or neglect.” 29 DCMR 5901.1(c). The dispositive issue is not whether Mr. Ashley has a right to a hearing, but whether Mr. Ashley has a right to a hearing *at OAH*. OAH does not have jurisdiction simply because CFSA advised him that he had a right to a hearing at the “Office of Fair Hearings and Appeals.” OAH has only the jurisdiction given to it by statute, and there is no statutory authority for it to hear Trinity’s challenge to the listing of Mr. Ashley in the Registry. “An administrative agency is a creature of statute and may not act in excess of its statutory authority.” *President and Directors of Georgetown College v. District of Columbia Board of Zoning Appeals*, 837 A.2d 58, 68 (D.C. 2003) quoting *District Intown Props., Ltd. v. District of Columbia Dep’t of Consumer and Regulatory Affairs*, 680 A.2d 1373, 1379 (D.C. 1996).

Perhaps CFSA’s erroneous advice to Mr. Ashley about his hearing rights could affect the running of any deadline for him to ask for a hearing. *Zollicoffer v. District of Columbia Public Schools*, 735 A.2d 944, 945-46 (D.C. 1999). Regardless of how that issue might be decided (and

⁴ CFSA also told Mr. Ashley that the address of that Office was the same as one of OAH’s offices. It appears that the reference to the non-existent “Office of Fair Hearings and Appeals” was an effort to refer Mr. Ashley to OAH.

I expressly do not decide it here) it is plain that OAH has no jurisdiction to give Trinity the hearing it seeks, even if Trinity has standing to assert Mr. Ashley's rights.

Therefore, for the reasons stated above, it is, this _____ day of _____, 2009:

ORDERED, that Trinity's request for a hearing to review the CFSA's placement restriction is **DISMISSED WITHOUT PREJUDICE** for lack of jurisdiction; and it is further

ORDERED, that Trinity's motion for reconsideration of the dismissal of its request for a hearing concerning Mr. Ashley's placement on the Child Protection Registry is **DENIED**; and it is further

ORDERED, that, because all claims in this case have now been decided, this is a final order in Case No. FS-C-08-800010, and any party may exercise the appeal rights stated below.

John P. Dean
Principal Administrative Law Judge