

Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

ENTRY ORDER

SUPREME COURT DOCKET NO. 2020-151

DECEMBER TERM, 2020

In re Appeal of K.C.*	}	APPEALED FROM:
	}	
	}	Human Services Board
	}	
	}	
	}	DOCKET NO. B-01/20-35

In the above-entitled cause, the Clerk will enter:

Petitioner appeals a Human Services Board order dismissing her appeal for lack of jurisdiction. We affirm.

The Board made the following factual findings. In spring 2017, petitioner applied for employment with a licensed childcare program regulated by the Child Development Division (CDD) of the Department for Children and Families (DCF). See Vermont Department for Children and Families, Licensing Regulations for Center Base Child Care and Preschool Programs, Code of Vt. Rules 13-171-004 [hereinafter DCF Regulations], <http://www.lexisnexis.com/hottopics/codeofvtrules> (providing “minimum requirements” to “protect the health and safety of Vermont’s children in out-of-home care”). The licensee requested a required regulatory background check of petitioner and petitioner consented. *Id.* 7.2.1 (requiring licensee to “ensure that any new individuals regularly present at the [childcare center] submit a Records Check Authorization form to the Division prior to working with children in the [childcare center]”). CDD determined that petitioner was a “prohibited person” under the applicable licensing regulations primarily due to findings in juvenile cases from 2007 and 2009 that petitioner’s minor children were in need of care or supervision (CHINS). *Id.* 7.2.6 (prohibiting persons “found by a court to have abused, neglected or mistreated a child,” among other things). In both cases, petitioner’s parental rights were terminated.¹ By separate letters in April 2017, the CDD notified the childcare program and petitioner that petitioner was a prohibited person and not eligible for employment with the program. The letter to petitioner explained the reason for the determination. The letter to the licensee explained that petitioner was a prohibited person but did not provide the reason. Petitioner and her prospective employer were notified that employer could

¹ This decision was affirmed by this Court on appeal.

seek a variance, but the childcare center indicated that it would not pursue employment of petitioner.

Petitioner then sent several letters to DCF requesting that her prohibited-person determination be reversed. DCF declined to change the determination.

In January 2020, petitioner wrote to the Board, seeking to appeal the prohibited-person determination. DCF moved to dismiss the appeal for lack of jurisdiction, or to affirm on the merits in the alternative.² In a written order, the Board dismissed the appeal for lack of jurisdiction, concluding that nothing in the Board's rules or DCF's regulations provided petitioner with a right to appeal the prohibited-person determination. Petitioner appeals.

Petitioner argues that the determination that she is a prohibited person is in error.

We begin with the question of the Board's jurisdiction. On appeal we give deference to the Board's decision and "[o]ur review is thus limited to determining whether the Board applied the proper legal standard, whether the evidence before the Board reasonably supports its findings, and whether the Board's findings reasonably support its conclusions." In re E.C., 2010 VT 50, ¶ 6, 188 Vt. 546 (mem.). We conclude that the Board did not err in concluding that neither the statute nor DCF's regulations provided it with jurisdiction over petitioner's appeal.

The relevant statute provides the Board with jurisdiction over appeals by applicants or recipients of assistance or services from several departments including DCF or applicants for a license from these departments. See 3 V.S.A. § 3091(a). Here, petitioner was not an applicant for or a recipient of aid or an applicant for a license.

Moreover, the regulations regarding background checks for childcare facilities do not provide for Board review of the prohibited-person determination. A licensee of a facility providing childcare in a center-based setting is required to request a background check for all individuals who are regularly present at the facility. DCF Regulations 7.2.1. Individuals are considered prohibited persons if they meet disqualifying criteria including where a court has made a finding of abuse or neglect. Id. 7.2.6. An individual may challenge the accuracy of the information that forms the basis for DCF's decision to the Commissioner. Id. 7.2.8.2 (providing that DCF must inform individual how to "challenge the accuracy or completeness of the information contained in the basis for the decision"). The regulations do not provide for review of this determination by the

² DCF also moved to dismiss the appeal as untimely. The Board did not reach this question.

Board.³ Therefore, we conclude that the Board properly dismissed petitioner's appeal for lack of jurisdiction.

Affirmed.

BY THE COURT:

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice

³ In contrast, DCF Regulations specify that licensees aggrieved by action, such as revocation or denial of a license, may appeal to the Human Services Board. DCF Regulations 2.6.2.