Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-473

AUGUST TERM, 2007

In re Appeal of Kathleen Lanctot	}	APPEALED FROM:
	}	
	}	
	}	Human Services Board
	}	
	}	
	}	Fair Hearing No. 20,265

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

Appellant Kathleen Lanctot appeals pro se from a decision of the Human Services Board revoking her family day care home registration certificate. Appellant appears to challenge evidentiary rulings by the Board's hearing officer and the sufficiency of the evidence to support the Board's decision. Ms. Lanctot did not appear for oral argument before this court at the scheduled time. Appellee waived oral argument, and we therefore consider the case on the briefs. We affirm.

The material facts may be briefly summarized. Appellant has been a registered day care provider since 1999. She typically provides care in her home for toddlers and preschool children. At the time of the pre-registration visit by an inspector for the Department for Children and Families in 1999, the inspector informed appellant that a large wood stove in an area accessible to children needed to be made inaccessible through the use of railing or gate, and appellant in response provided the Department a statement indicating that the stove would not be used during business hours. During a number of subsequent site visits, however, Department licensors remained concerned about the wood stove and informed appellant of the need to place a barrier around it if used during the day. Inspectors also informed appellant of the need to maintain daily attendance records, which were missing or out of date.

On March 1, 2006, during a routine inspection visit, a Department licensor noted, among other areas of concern, that daily attendance records remained out of date, that the wood stove had been in use and was unprotected from children, that an open rabbit cage was in the children's play area, and that rabbit feces and food pellets were on the floor around the cage and in the surrounding rooms. When the licensor raised questions about the rabbit feces, appellant ordered her out of the house. The following day, the licensor and a Department investigator returned to the house and again noted, among other concerns, that the wood stove was in use and unprotected, that rabbit feces and pellets were on the floor in the children's playroom and under a child's sleeping blanket, that a rabbit cage containing feces and urine was in the play area, and that appellant acknowledged children had

been playing inside the cage. On March 13, 2006, the Department sent appellant a notice of intent to revoke her day care registration certificate for regulatory violations including the failure to protect children from hazards, failure to maintain accurate records, impeding an inspection, and other inappropriate behavior exhibited toward the children which the inspectors observed during the inspections.

In late August 2006, following a series of prehearing conferences, the Board's hearing officer conducted an evidentiary fair hearing. Thereafter, the officer issued written findings and conclusions recommending that the Board affirm the Department's decision to revoke appellant's certificate. The Board heard oral argument in September 2006, and subsequently issued a written decision affirming the Department's revocation of appellant's certificate. Appellant represented herself throughout the proceedings. This pro se appeal followed.

Our review on appeal is limited. We will not set aside the Board's findings unless they are clearly erroneous, and will uphold its decision if the record contains any credible evidence that fairly and reasonably supports it. In re Potter, 2003 VT 101, ¶ 10, 176 Vt. 574; Hall v. Dep't of Soc. Welfare, 153 Vt. 479, 486-87 (1990). Appellant's pro se brief does not contain a clear statement of the issues for which she seeks review or clearly state her contentions and the reasons therefor, with citations to supporting law and authorities, as required by V.R.A.P. 28(a). As we construe it, however, appellant's brief appears to raise several issues. First, appellant suggests that she was denied access to her file. The claim is not supported by any reference to the record, which shows—to the contrary— that the Department sent her numerous documents from the case file. Accordingly, we discern no ground to disturb the judgment on this basis.

Appellant also contends the hearing officer admitted irrelevant evidence. Appellant notes that the hearing officer referred at the start of the hearing to certain preliminary agreements made by the parties during pre-hearing conferences concerning the scope of the issues to be determined at the hearing. The parties had apparently agreed to focus on the principal allegations concerning the safety issues posed by the wood stove and rabbit cage, as well as the alleged omissions in record keeping. Appellant objected to the admission of certain inspection reports that referred to these as well as other alleged violations, including allegations relating to cleanliness issues, appellant's interactions with the children, ingress and egress issues, and appropriate television programs. The hearing officer overruled the objection, explaining that it could sort through the documents and focus on the principal violations.

Administrative agencies enjoy substantial discretion in evidentiary matters, and we will not disturb their rulings absent an abuse of discretion. In re Cent. Vt. Pub. Serv. Corp., 141 Vt. 284, 288 (1982). Appellant has not shown here that the hearing officer improperly admitted the evidence in question, or that officer or the Board were improperly influenced by allegations unrelated to the central issues. See Passion v. Dep't of Soc. & Rehab. Servs., 166 Vt. 596, 597 (1997) (mem.) (petitioner must show not only that Board erred in admitting evidence, but also that the error was prejudicial). Indeed, in their decisions the hearing officer and Board expressly declined to rely on these other issues, observing that the Department acknowledged they were not its primary concern. Accordingly, we find no basis to disturb the decision on this ground.

Appellant also appears to argue that she was unfairly induced not to introduce the testimony of parents of children at the day care. The record shows that, when appellant raised the subject at the hearing, the hearing officer recalled advising appellant against general testimonials but that she was free to call any witness with specific knowledge relating to the alleged violations. We thus find no basis to conclude that appellant was unfairly precluded from calling witnesses.

Appellant further appears to object that she did not receive adequate or timely notice of the alleged violations, but the record discloses that she received written notice on March 13, 2006, within two weeks of the March 1st and 2nd site visits, setting forth in detail the inspectors' observations and citing the regulations at issue.

Appellant additionally recalls that she raised an objection on hearsay grounds at the hearing, but the record shows that the witness did not report what someone else had said, and the evidentiary rules in such hearings are more relaxed in any event. See In re Smith, 169 Vt. 162, 173 (1999).

Finally, appellant asserts generally that the alleged violations were grossly misrepresented and exaggerated. As noted, however, we review the record solely to determine whether the findings are supported by credible evidence and reasonably support the Board's decision. In re Potter, 2003 VT 101, ¶ 10. The State here adduced substantial testimony from Department inspectors and investigators to substantiate the allegations and findings, which together represent—as the Board found— serious violations imperiling the health and safety of the children enrolled. Accordingly, we find no grounds to disturb the judgment.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Denise R. Johnson, Associate Justice

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John A. Dooley, Associate Justice