

Cause #: 00-31Q
Name: Trinity Wesleyan Child Care
Administrative Law Judge: William K. Teegarden
Date: May 18, 2000
Commission Action: Affirmed

FINDINGS OF FACT

1. The OSFM and the FPBSC are agencies within the meaning of IC 4-21.5.
2. IC 4-21.5 applies to this proceeding.
3. The FPBSC is the ultimate authority within the meaning of IC 4-21.5 with respect to orders of the OSFM.
4. At all times relevant to this proceeding, Trinity operated a duly licensed day care facility in Hamilton County, Indiana.
5. The OSFM is the State Agency responsible for conducting periodic fire inspections of licensed day care facilities in Indiana.
6. On December 7, 1999, the OSFM left an order at Trinity's place of operation citing Trinity for using textile wall covering not meeting flame resistant standards.
7. On January 4, 2000, Trinity filed for administrative review of the order.
8. On February 1, 2000, the FPBSC denied administrative review because the petition was not filed within 18 days of the date of service.
9. Trinity filed a timely appeal of this decision of the FPBSC and was given time to file additional information.
10. Nothing further was filed and thus the only reason or information presented to the administrative law judge dealing with the time delay for appeal is a letter written January 4, 2000, stating that the offices were closed during Christmas and New Years.
11. IC 4-21.5-3-6 and 7 requires that a petition for administrative review must be requested within 15 days of its service.
12. IC 4-21.5-3-2 allows 3 days to be added for the use of regular U.S. Mail.
13. The petition for review was due on December 25, 1999.

14. IC 4-21.5-3-2 also provides that if the due date is a Saturday, Sunday, or holiday, the due date becomes the next business day.

15. December 27, 1999, was the next business day and thus was the due date for the filing of the petition for administrative review.

16. IC 4-21.5-3-7(a) states the petition must be “. . . filed with the ultimate authority for the agency issuing the order within fifteen (15) days after the person is given notice”

17. The petition for administrative review was not filed within the time limit prescribed by law.

18. No legal justification or excuse has been presented for not filing timely.

19. Trinity does not qualify for administrative review.

NONFINAL ORDER

The petition for administrative review of the order of the State Fire Marshal dated December 7, 1999, issued to Trinity Wesleyan Child Care was not timely filed and is hereby dismissed.

