

Cause #: 01-21Q
Name: Parents Choice Child Care
Administrative Law Judge: William K. Teegarden
Date: July 12, 2003

FINDINGS OF FACT

1. The SFM and the FPBSC are agencies within the meaning of IC 4-21.5.
2. The FPBSC is the ultimate authority within the meaning of IC 4-21.5 with respect to orders issued by the SFM.
3. At all times relevant to this proceeding, the Daycare operated a Daycare Ministry in Evansville, Indiana.
4. On February 19, 2001, a duly authorized representative of the SFM conducted a routine inspection of the Daycare.
5. The inspector noticed several conditions he felt violated the IFC and reported same to his superiors.
6. On March 6, 2001, the SFM prepared an order citing the violations and that order was signed by the Chief Inspector on March 7, 2001.
7. The Order was served on the Daycare on March 8, 2001.
8. The Daycare wished to contest only the portion of the Order dealing with the construction of a new interior office.
9. The Daycare attempted to contact the field inspector to discuss the problem.
10. On March 27, 2001, the field inspector returned to the Daycare and discussed the violation with the director. The net effect of the discussion was to leave the violation in place, so the Daycare filed a petition for administrative review.
11. IC 4.21.5-3-7(a)(2) set qualifications for persons seeking administrative review. To qualify, a person must file a petition for review within 15 days of notice of the order.
12. IC 4-21.5-3-2 adds 3 days to the time period if U.S. mail is used for service.

13. IC 4-21.5-3-2 also extends the time to the next business day if the last day falls on a Saturday, Sunday, or Holiday.
14. The evidence most favorable to the Daycare is that the notice was serviced on Thursday March 8, 2001, and the petition for review was mailed on Tuesday March 27, 2001.
15. The time in which to qualify for administrative review expired on Monday March 26, 2001.
16. The Daycare does not qualify for administrative review as described in IC 4-21.5 because the petition for review was not filed within the prescribed time limits.¹
17. The Daycare points out that part of the reason for delay dealt with waiting for a return call from the inspector to discuss the matter.
18. Seeking solutions through informal discussion is a good idea and is specifically encouraged by the appeals rights contained in the Order. However, also in writing with the appeal rights is a clause that states “Such an informal discussion or request therefore does not extend the deadline for filing a petition for review”
19. The Daycare was advised in writing that the time for appeal was not extended by a request to discuss the matter.

NONFINAL ORDER

The petition for administrative review filed by parents Choice Child Care on March 27, 2001, seeking review of the State Fire Marshal’s Order of March 7, 2001, was not timely filed and therefore properly refused by the Fire Prevention and Building Safety Commission.

¹ This only applies to administrative review under IC 4-21.5. The Daycare is not prohibited from continuing discussions with the Marshal’s office dealing with the nature and extent of the violation, if any, or exploring relatively simple, inexpensive solutions.

