UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2759

September Term, 2013

SARA GHEBRE

v.

MARYLAND STATE DEPARTMENT OF EDUCATION, OFFICE OF CHILD CARE

Meredith,
Berger,
Kenney, James A., III
(Retired, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: June 21, 2016

Sara Ghebre, appellant, appeals the decision of the Office of Child Care denying her application for a family child care certificate which would have enabled her to provide child day care in her home. The agency's denial was affirmed on administrative appeal to the Office of Administrative Hearings, and again affirmed when appellant filed a petition for judicial review in the Circuit Court for Charles County. Appellant asks that we reverse the ruling of the circuit court and order the Office of Child Care to issue her the certificate she seeks. We will not grant her request for relief.

QUESTIONS PRESENTED

Although appellant presented four questions in her brief, the only issue properly before this Court for appellate review is whether the agency's decision was legally correct and supported by substantial evidence.[1] *Tomlinson v. BKL York LLC*, 219 Md. App. 606,

[1] Appellant presented the following questions in her brief:

1. Did the circuit court errenously [sic] rely on applying that the reviewing court must review the agency's decision as prima facia correct and presume valid when such application was erronous [sic] and inappropiate [sic] in this instant matter?

2. Did the circuit [court] erred in depriving appellant of her constitu[t]ional right to do processing [sic] by failing to adequately revi[e]wing her request for review under the arbitrary and capricious standard, abuse of discrition [sic], presence of bias. When a presence of any means a decision maker is doing according to one's will or caprice and therefore conveying a notion of a tendency to abuse the possession of power.

3. Did the court erred in effectively denying appellant a meani[n]gful hearing on her request for review and rebuttal in regards to the denying of her initial application, ther[e]by denying appellant due process of law, both substantive and procedur[ ]al, under both the Maryland

(continued...)

614 (2014). We answer that question "yes," and affirm the Circuit Court for Charles County.

FACTS AND PROCEDURAL HISTORY

In September 2000, the Maryland Child Care Administration issued appellant a certificate of registration to operate a family day care service in her home.[2] Appellant began providing child care services for several children. On November 15, 2001, appellant drove in her van with four children — two of her own children, and two day care children — to a bank, and then stopped at BJ's in Waldorf to purchase snacks. The children were 11 months old, 14 months old, 2 years old, and 3 years old. When appellant arrived at BJ's, she realized that the two older children had fallen asleep. Rather than waking the two sleeping children, and taking all four of the children in her care into BJ's, appellant parked her van in a no-parking zone in front of the store, gave her 14-month-old child a piece of bread so

[1](...continued)

> Constitution, Arti[c]le 24 Declaration of Right [sic], and the Fo[u]rteenth Amendment to the United States Constitution.
>
> 4. Did the court erred in not using its authority to remand the ALJ's ruling when it was within its authority as permitted under, Section 10-222(h) of the SG Article providing that the court may: 13 [sic] (1) remand the case for further proceedings; (2) affirm the final decision; or (3) reverse or modify the decision if any substantial right of the petitioner may have been prejudiced by a finding, conclusion, or decision.

[2] When appellant was initially licensed as a family day care provider in 2000, the agency tasked with issuing such licenses was the Child Care Administration, a unit of the Division of Early Childhood Development within the Maryland Department of Human Resources. As of, and since, appellant's 2008 application, the Office of Child Care, a unit of the Division of Early Childhood Development within the Maryland State Department of Education, has been the agency responsible for the regulation and licensing of child care facilities.

that he would not cry, left the driver's window partially down, and went into the store. She left the van doors unlocked. While in the store, she was not always within sight of the van; in any event, she could not have seen into the van because it had tinted windows.

While appellant was shopping inside the store, she overheard comments about children and a van. Realizing the children and the van being discussed were her children and her van, she went outside and found several "angry" people around her van. She was told that the police had been called. She waited for officers from the Charles County Sheriff's Office to arrive. She was eventually charged criminally with four counts of confining an unattended child in a motor vehicle, in violation of § 5-801 of the Family Law Article. On April 9, 2002, appellant entered a guilty plea to one count of confining an unattended child. The three remaining charges were *nol prossed*. Appellant was sentenced to 30 days, with all but two days suspended, and one year of unsupervised probation. Her motion for reconsideration, in which she asked to be granted probation before judgment, was denied on May 7, 2002.

The Sheriff's Office notified Child Protective Services of the events at BJ's the day they occurred, and appellant contacted the Child Care Administration the next day. A Child Protective Services investigation commenced on November 20, 2001, and resulted in a finding of Indicated Child Neglect, with appellant identified as the neglector. As of April 2002, appellant had on her record both a criminal conviction for confining an unattended child, and an "indicated" finding by Child Protective Services that she had committed child neglect.

On December 13, 2001, the Child Care Administration advised appellant of its intent to revoke her certificate of registration to operate a family day care. The December 13 letter cited the incident at BJ's, and characterized appellant's actions on that occasion as "unsafe and not appropriate supervision," in violation of COMAR 07.04.01.24.[3] Additionally, the letter advised appellant that an inspection of appellant's home by the Child Care Administration on November 16, 2001, revealed further COMAR violations, namely that appellant lacked certain required documentation for the children in her care.[4] On January 15,

[3] In December 2001, COMAR 07.04.01.24, which was captioned "Supervision," provided:

> A. When a child is in care, the provider or substitute shall:
>
> (1) Be physically present on-site and within sight or sound of the child at all times at the family day care home; and
>
> (2) Provide supervision appropriate to the age, activities, and individual needs of the child.
>
> B. When the outdoor play space is not on the premises, the provider or substitute shall accompany and supervise a child of any age in transit to and from the space and while at the space.
>
> C. The provider may permit a child to participate in supervised activities out of the home without the provider if:
>
> (1) The provider has prior written permission from the child's parent for the child's participation; and
>
> (2) Responsibility for the child's whereabouts and supervision is clearly assigned throughout the period of care.

[4] The letter also advised appellant that she was in violation of COMAR 07.04.01.29 (continued...)

2002, the Child Care Administration sent appellant a supplemental addendum to its December 13, 2001, letter, advising her that the results of the Child Protective Services investigation provided an additional reason for its revocation of her license.

Appellant filed an administrative appeal of the license revocation. On April 8, 2002, following a contested case hearing by the Office of Administrative Hearings on March 15, 2002, the Administrative Law Judge ("ALJ") issued an opinion and order affirming the revocation. Appellant filed a petition for judicial review in the Circuit Court for Charles County, which issued an opinion and order on March 13, 2003, affirming the ALJ's decision to affirm the revocation. Appellant's appeal to this Court was unsuccessful, and resulted in the issuance of an unreported opinion on November 21, 2005, again affirming the agency's decision to revoke her certificate. *Sara Alem Ghebre v. Department of Human Resources, Child Care Administration,* No. 01136, Sept. Term, 2004.

It appears from the record that, on November 10, 2003, appellant re-applied for a family day care certificate of registration. In connection with the application, appellant's home was inspected on June 9, 2004, and found to be noncompliant with six different

[4](...continued)
(which required that a care provider maintain certain emergency forms, health inventories, and immunization records prior to enrolling a child in the family day care program) and COMAR 07.04.01.41 (which specified various records a provider is required to maintain).

regulations under COMAR 07.04.01.[5] Appellant's application was denied on June 18, 2004. Appellant appealed the denial, but later withdrew the appeal.

On October 28, 2008, appellant again applied for a family day care certificate of registration. On December 8, 2008, the Office of Child Care notified appellant by letter that it was denying her application on the basis of her prior history and the agency's conclusion that appellant was "unable to provide for the health, safety, or welfare of day care children." Appellant filed an administrative appeal, which was heard on March 26, 2009. The ALJ issued an opinion and order on March 30, 2009, affirming the denial of appellant's application.

[5] The June 18 denial letter explained that the June 9 inspection revealed that appellant's home was not compliant with the following provisions of COMAR 07.04.01:

> .17 Requirements for the Home – the toilet seat needed to be replaced.
>
> .19B3 Rooms Used for Child Care – no child-proof devices had been placed on cabinets in the upstairs hall bathroom.
>
> .20 Potentially Hazardous Items – beer was stored in the refrigerator where it was accessible to children. Beauty items were also left in a bathroom where they were accessible to children.
>
> .21A Outdoor Safety – the fence between the outdoor play area and a busy street is in need of repair.
>
> .26 Materials and Equipment – the kitchen table was in need of repair and two cribs had chipping paint.
>
> .39A Emergency Safety – emergency numbers were not posted next to the telephones in the home.

On December 19, 2011, appellant again applied for a family child care certificate of registration. The denial of this application is the subject of the present appeal. By letter dated January 18, 2012, the Office of Child Care notified appellant that it was denying her application. The letter was almost identical to the denial letter sent by the Office of Child Care on December 8, 2008. Appellant again filed an administrative appeal. A contested case hearing was conducted by the Office of Administrative Hearings on March 20, 2012. On April 25, 2012, the ALJ issued an opinion and order affirming the Office of Child Care's denial of appellant's application.

The ALJ made 23 findings of fact, most of which were recitations of appellant's prior history with both the Child Care Administration and the Office of Child Care, and of her repeated attempts to become licensed as a family day care provider. The ALJ made the following factual findings:

> 19. On December 19, 2011, the Appellant submitted another application for a [Family Day Care] Certificate[of Registration].
>
> 20. In Section II of the application, the Appellant was asked if she or any other person living in the family day care home had ever been convicted of any criminal charge, or received a probation before judgment disposition, or received a not criminally responsible disposition. The Appellant checked the "YES" box and explained: "Your office has necessary information in connection to this matter in this section."
>
> 21. In Section II of the application, the Appellant was asked i[f] she or any other persons living in the family child care home had ever been reported for child or adult abuse or neglect. The Appellant checked the "YES" box and explained: "Your office has all the details relating to this matter on your file. Nothing other than what is in your record."

22. In Section II of the application, the Appellant was asked if she had ever had a license, registration or certification for any type of care denied, suspended or revoked. The Appellant checked the "YES" box and explained: "Revoked in April 2002. Denied number of times. Please refer to your record for exact date of denial."

23. On January 18, 2012, Susan C. Copsey, Regional Manager for Region X, [the Office of Child Care], denied the Appellant's December 19, 2011 application for an initial family day care certificate of registration.

Ms. Copsey testified at the hearing. She had been the Regional Manager for the relevant region of the Office of Child Care (and its predecessor, the Child Care Administration) since March of 1991. Ms. Copsey authored the December 13, 2001, letter notifying appellant that the Child Care Administration was revoking her registration, and she wrote the January 15, 2002, addendum to that letter. Additionally, Ms. Copsey wrote the denial letters of June 18, 2004, December 8, 2008, and January 18, 2012. The ALJ characterized Ms. Copsey's testimony as "strong, persuasive support for the Office of Child Care's decision to deny the Appellant's application." Ms. Copsey testified about appellant's history with the agency, and was then asked why appellant's 2011 application for a certificate of registration had been denied. The following testimony is relevant:

> [BY THE STATE]: All right. Has anything changed since [appellant] was originally revoked that would indicate to you that she would provide proper care of children?
>
> [BY MS. COPSEY]: Not that I'm aware of.
>
> Q. Why did the [Office of Child Care] take this denial action?
>
> A. We took the action, as I said in my letter, based on [appellant's] criminal conviction of reflecting behavior harmful to children, as well as her indicated findings by the Department of Social Services identifying her as

responsible for child neglect of four children, including two daycare children. As well as her evaluation of her childcare history with us. And those reasons are spelled out in my denial letter of January 18th, 2012.

Q. Ha[ve] [appellant's] previous actions give[n] you concern for the health, safety and welfare of the children that would be placed in her care?

A. Yes.

Q. And why is that?

A. Because [appellant] was trained and told about the importance of supervision. [Appellant] even signed a statement acknowledging that she understood supervision and would agree to provide that appropriate supervision. In spite of that training and counseling, [appellant] chose to take four children to the bank, to the store. She chose to leave those four children [—] two infants, a two-year-old and a three-year-old [—] in an unlocked van in front of the BJ's store in a no parking zone, a very busy area.

She gave her own infant son pita bread to keep him quiet while she went inside of the store. She made the decision to take her film to be developed because she wanted to see the pictures from the Halloween party. She made the decision to shop for snacks, and she made the decision to stand in the line to pay for her merchandise while the children who are entrusted in her care were in the van unattended. This causes us concern about [appellant's] willingness or ability to provide for the health, safety and welfare of children in her care. Her behavior on that day was too egregious for us to ignore.

When we issue a registration to a family childcare provider, we are saying to any parent who may bring their child there that we have conducted all of the necessary criminal background clearances, that we have conducted all of the child abuse clearances, we have done all of the inspections, we have completed all of the proper training and we believe this to be a healthy and safe place for children to be.

Based on [appellant's] past actions, the Agency can't say to a parent that this is the case. We have doubts about her ability to do this. A family childcare provider is in a family daycare home every day on her own without any other supervision. She is the person responsible for providing that supervision. This Agency can't be there every day to monitor that. We do

have doubts about her ability to provide the care and we have to err in favor of the child.

I understand [appellant's] willingness to want to work with children, and I'm not saying she's a bad person. I'm not saying she doesn't care about children, but she doesn't meet the standard that the state of Maryland requires for us to issue her a license. We can't take the chance.

Q. Is the Agency's role a proactive one or reactive one, specifically what I mean by that is does — is the Agency required to wait until a child is injured until it takes an action?

A. No, the Family Law Article specifies that certain precautions have to be taken when children are placed in out of home care settings. And the Agency does take a proactive or preventative role in order to protect children in those out of home care settings.

Q. Okay. To this point, even up to this hearing today, has [appellant] conceded at all what she did with the children originally was not proper or has she blamed others for her plight in being revoked and not getting her license back and her criminal convictions [sic]?[6]

A. Well, I don't think [appellant] has said she didn't do what she did. I think she has minimized the severity of it. I don't think that she understands that what she did really was neglectful and really was as serious as it was. She certainly doesn't understand that it was criminal and she has repeatedly blamed me personally. She has blamed our attorney. She has blamed the Administrative Law Judge. She has written letters to the Governor, to the Lieutenant Governor, to my supervisors. She has repeatedly blamed everyone for her misfortune and part of me understands her lashing out, but part of me also understands that she really doesn't understand that what she did was so egregiously wrong and that causes me concern.

On cross-examination, appellant asked Ms. Copsey if she felt "there hasn't been any correction" of the behavior that caused the initial revocation. Ms. Copsey responded:

[6]As far as the record shows, appellant has only one criminal conviction. She pled guilty on April 9, 2002, to one count of confining an unattended child.

> [BY MS. COPSEY]: If I understand the question correctly, [appellant] is asking me if one of the conditions for which I took the revocation action or denial action has been corrected, and my answer to that is no. She still has a history of behavior harmful to children including a criminal conviction, child abuse findings and the violations of the childcare regulations.
>
> The correction that I believe she may be looking for would be applicable to things that go away. Like if there was a denial based on lead paint in the home, that can be corrected or abated. Or if there's a resident of the home who poses a problem to the daycare children and that resident . . . ceases to be in the home, that can be corrected.
>
> In [appellant's] case, her judgment in the situation remains her judgment. Her history remains her history, that hasn't gone away. If — if that's what she's asking me, that's my answer.

Appellant asked Ms. Copsey a question about why appellant's own expressions of regret were not sufficient to overcome the agency's perception that she could not be trusted to provide safe care for children. The ALJ reframed the question to ask why, in light of appellant's having told the agency that she was sorry and her actions were ignorant, rather than malicious or neglectful, that would not be sufficient for the agency to approve her application. Ms. Copsey answered:

> [BY MS. COPSEY]: I — I understand that and — and to answer her question, she did say that she had done it and she did say that she was sorry, but as I stated in my testimony, I think she has minimized it. Do I think that she intentionally left the children, thinking that harm would come to them? No, probably not, but she did make that decision to leave them and harm [could have] come to them. . . . She chose to make that action. It was her decision to do that, that's what causes us concern.
>
> Her judgment in this case was so flawed in that situation that it raises doubts for us and we cannot trust her to do what is required in the state of Maryland to keep children safe. . . .

The ALJ found Ms. Copsey's testimony credible and persuasive. In the ALJ's written decision affirming the denial of a day care certificate, the ALJ explained, *inter alia*:

> Ms. Copsey provided strong, persuasive support for the [Office of Child Care]'s decision to deny the Appellant's application. Her testimony was direct and to the point. Her discussion of the Appellant's history provided substantial factual background and support for the [Office of Child Care]'s decision. She explained why the Appellant's past actions, flawed judgment and failure to admit responsibility for the seriousness of the 2001 incident required a denial of the Appellant's application. . . .
>
> The Appellant also testified. The Appellant continued to deny responsibility for the 2001 incident saying such things as: "nothing happened to those kids — they were right in front of me;" "as long as there was enough air they were fine," and, she "did not have enough knowledge that this was wrong." The Appellant said that she "thought loving them was enough."
>
> Based on my observation of the Appellant's demeanor and testimony, it is clear that the Appellant still does not accept responsibility for the serious mistake she made in 2001 and simply does not understand that what she did was so clearly in violation of day care requirements. I also find that the Appellant remains in denial regarding the seriousness [of] the 2001 incident. In fact, during her testimony, the Appellant unwittingly provided support for the [Office of Child Care]'s denial of her application.

The ALJ concluded:

> In summary, after considering the complete record and determining that the [Office of Child Care] correctly applied state regulations in reaching its decision denying the Appellant's December 19, 2011 application for an initial family child care certificate of registration, I uphold the [Office of Child Care]'s decision to deny the Appellant's application for an initial family day care certificate of registration.

STANDARD OF REVIEW

We discussed this Court's standard for review of decisions of an administrative agency in *Doe v. Allegany County Dept. of Social Services,* 205 Md. App. 47, 54-55 (2012):

Generally, when reviewing the decision of an administrative agency a court must only determine "if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law." *Catonsville Nursing Home, Inc. v. Loveman*, 349 Md. 560, 568, 709 A.2d 749, 753 (1998) (citing *United Parcel Serv., Inc. v. People's Counsel*, 336 Md. 569, 577, 650 A.2d 226, 230 (1994)). Therefore, we review the decision of the agency rather than that of the circuit court. *See Owens v. Prince George's County Dep't of Soc. Servs*., 182 Md. App. 31, 51, 957 A.2d 191, 203 (2008).

Our review of the agency's factual findings consists solely of an appraisal and evaluation of the agency's fact finding and not an independent decision on the evidence. *Catonsville Nursing Home*, *supra*, 349 Md. at 570, 709 A.2d at 753 (citing *Anderson v. Dep't of Pub. Safety & Correctional Servs*., 330 Md. 187, 212, 623 A.2d 198, 210 (1993)). This evaluation seeks to find whether the evidence is substantial. Thus, "a reviewing court, be it a circuit court or an appellate court, shall apply the substantial evidence test to the final decisions of an administrative agency. . . ." *Id*. (citing *Baltimore Lutheran High Sch. Ass'n v. Employment Sec. Admin*., 302 Md. 649, 662, 490 A.2d 701, 708 (1985); *Anderson, supra,* 330 Md. at 212, 623 A.2d at 210; *Bulluck v. Pelham Wood Apts*., 283 Md. 505, 511–13, 390 A.2d 1119, 1123 (1978)). In this context, "'substantial evidence,' as the test for reviewing factual findings of administrative agencies, has been defined as 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion[.]'" *Id.* (quoting *Bulluck, supra*, 283 Md. at 512, 390 A.2d at 1123).

It is well established that "reviewing courts are under no constraint to affirm an agency decision premised solely upon an erroneous conclusion of law." *Id*. (citing *Ins. Comm'r v. Engelman*, 345 Md. 402, 411, 692 A.2d 474, 479 (1997)). Accordingly, we may reverse an administrative decision premised on erroneous legal conclusions.

Additionally, we are obligated to "review the agency's decision in the light most favorable to the agency," because their decisions are prima facie correct and carry with them the presumption of validity. *Id.* (citing *Anderson, supra*, 330 Md. at 213, 623 A.2d at 211; *Bulluck, supra*, 283 Md. at 513, 390 A.2d at 1124). The Court of Appeals has consistently stated that an adjudicatory agency's decision can only be reviewed on grounds identical to those relied upon by the agency. *Dep't of Health & Mental Hygiene v. Campbell*, 364 Md. 108, 112 n. 12, 771 A.2d 1051, 1053 n. 12 (2001). Finally, in an administrative appeal, the appellant bears the burden of establishing an

error of law or that the agency's final decision was not supported by substantial evidence. *Taylor v. Harford County Dep't of Soc. Servs.*, 384 Md. 213, 222–23, 862 A.2d 1026, 1031 (2004).

DISCUSSION

I. Substantial evidence

"Substantial evidence" is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Bulluck v. Pelham Wood Apartments*, 283 Md. 505, 512 (1978). In *Bulluck*, the Court of Appeals noted:

> [The appellate court's] scope of review "is limited 'to whether a reasoning mind reasonably could have reached the factual conclusion the agency reached,'" *Dickinson-Tidewater v. Supervisor*, 273 Md. 245, 256, 329 A.2d 18, 25 (1974). *See Pemberton v. Montgomery County*, 275 Md. 363, 367-368, 340 A.2d 240 (1975); *Supervisor v. Peter & John Radio*, 274 Md. 353, 355-356, 335 A.2d 93 (1975); *St. Comm'n On Human Rel. v. Malakoff*, 273 Md. 214, 224, 329 A.2d 8 (1974); *Gutwein v. Easton Publishing Co.*, 272 Md. 563, 567, 325 A.2d 740 (1974), *cert. denied*, 420 U.S. 991, 95 S.Ct. 1427, 43 L.Ed.2d 673 (1975). And *see generally Universal Camera Corp. v. Labor Board*, 340 U.S. 474, 71 S.Ct. 456, 95 L.Ed. 456 (1951); *Consolidated Edison Co. v. Labor Board*, 305 U.S. 197, 229, 59 S.Ct. 206, 83 L.Ed. 126 (1938); 4 K. Davis, Administrative Law Treatise ss 29.01, at 114-126 (1958 ed.); L. Jaffe, Judicial Control of Administrative Action, 600-615 (1965); Jaffe, Judicial Review: "Substantial Evidence on the Whole Record," 64 Harv.L.Rev. 1233 (1951); Stason, "Substantial Evidence" in Administrative Law, 89 U.Pa.L.Rev. 1026 (1941); Stern, Review of Findings of Administrators, Judges and Juries: A Comparative Analysis, 58 Harv.L.Rev. 70 (1944); Tomlinson, Constitutional Limits on the Decisional Powers of Courts and Administrative Agencies in Maryland, 35 Md.L.Rev. 414, 416-425 (1976).
>
> In applying the substantial evidence test, we have emphasized that a "court should (not) substitute its judgment for the Expertise of those persons who constitute the administrative agency from which the appeal is taken." *Bernstein v. Real Estate Comm.*, 221 Md. 221, 230, 156 A.2d 657, 662 (1959), *appeal dismissed*, 363 U.S. 419, 80 S.Ct. 1257, 4 L.Ed.2d 1515 (1960). We also must review the agency's decision in the light most favorable to the agency, since "decisions of administrative agencies are prima facie correct,"

> *Hoyt v. Police Comm'r*, 279 Md. 74, 88-89, 367 A.2d 924, 932 (1977), and "carry with them the presumption of validity," *Dickinson-Tidewater, Inc. v. Supervisor, supra*, 273 Md. at 256, 329 A.2d at 25; *Heaps v. Cobb*, 185 Md. 372, 378, 45 A.2d 73 (1945). Furthermore, not only is it the province of the agency to resolve conflicting evidence, but where inconsistent inferences from the same evidence can be drawn, it is for the agency to draw the inferences. *Labor Board v. Nevada Consolidated Copper Corp.*, 316 U.S. 105, 106-107, 62 S.Ct. 960, 86 L.Ed. 1305 (1942); *Board v. Levitt & Sons*, 235 Md. 151, 159-160, 200 A.2d 670 (1964); *Snowden v. Mayor & C. C. of Balto., supra*, 224 Md. at 448, 168 A.2d 390.

Here, the agency denied appellant's application on the basis of its conclusion that she was "unable to provide for the health, safety, or welfare of day care children," a conclusion based on appellant's history and COMAR 13A.15.02.07A, cited in the denial letter of January 18, 2012. COMAR 13A.15.02.07A permits the Office of Child Care to deny an applicant a certificate under certain circumstances, six of which were invoked here:

> A. The office may deny a certificate of registration if:
>
> (1) **The applicant**, a resident, any substitute, or the home in which child care is to be provided **fails to meet the requirements of this subtitle**;
>
> * * *
>
> (3) **The applicant has a documented history of serious or repeated regulatory violations of these or other regulations of any state concerning the care of children or adults which demonstrates an inability to provide for the health or safety of children**;
>
> (4) **The applicant has had a certificate of registration**, a child care center license, or a letter of compliance denied or **revoked** before the date on the registration application, unless the office is satisfied that the condition that was the basis for the denial or revocation has been corrected;
>
> * * *

(8) **An evaluation of the criminal record of the applicant,** a paid additional adult, a paid substitute, or a resident in the home **reveals that the individual has a criminal conviction,** probation before judgment, not criminally responsible disposition, or is awaiting a hearing for a criminal charge **that indicates behavior harmful to children;**

(9) **An evaluation of the information provided in records of abuse and neglect of children and adults reveals that the applicant,** an additional adult, a substitute, or a resident **is identified as responsible for abuse or neglect of children** or adults, or is currently under investigation for alleged acts of abuse or neglect of children or adults; or

(10) **Based on** an interview with the applicant or **an evaluation of other pertinent information, the office finds evidence that raises reasonable doubt that the applicant can provide for the health, safety, or welfare of children in care.**

(Emphasis added.)

Appellant does not dispute that, indeed, she has a criminal conviction for confining an unattended child, which clearly qualifies as "a criminal conviction . . . that indicates behavior harmful to children." COMAR 13A.15.02.07A(8). Appellant does not dispute that the Child Protective Services investigation in November 2001 resulted in a finding that she was a child neglector. COMAR 13A.15.02.07A(9). It is beyond dispute that appellant's previous certificate was revoked. COMAR 13A.15.02.07A(4). Any of these three reasons standing alone would have provided a sufficient basis for the Office of Child Care's denial.

Appellant does not argue that the incident at BJ's did not occur, but rather, argues that she was guilty of nothing more than ignorance. She emphasizes that she was not motivated by a desire to see the children hurt, but was merely "naive," and, as she explained to the ALJ,

her actions at BJ's "was basically due to the fact that I grew up in an area where children are never harmed or taken away by strangers." In her brief, appellant does not explain which, if any, of the ALJ's factual findings she contends is in error. She does contend that Ms. Copsey "has a hidden vendetta to deny Appellant's initial application, and she will continue to do so no matter years of Appellants [sic] achievement in providing a safe and loving environment." Appellant argues that she has taken various training and safety courses over the past several years, and she provided the ALJ with 31 letters of recommendation, including one written in 2002 by a parent reflecting on care appellant gave the letter writer's daughter in 1995-96.

But, even in her brief in this Court, appellant characterizes the facts in a manner that suggests she continues to believe that her decision to leave four very young children alone in her van while she ran errands was not something that should preclude her from being certified as a day care provider. She argues:

> That day November 15, 2001, when Appellant left her home; she left with so much great love and good intention for the children she transported in her Van, two of which her own precious ones, after dropping some after pre-K kids at Dr. Gustave Brown Elementary School, the Appellant continued with her trip that eventually ended at the BJ. Wholesale, as she got to the parking lot; appellant noticed that one of her two sons and another toddler sounded asleep. She, not wishing to disturb their sleep drove her VAN, right directly in front of the sliding door of the store entrance, at the time concerned mainly of the children getting proper breathing air (It was November, beautiful weather, no cold or hot temperature) after rolling the two front driver and passenger window down, she proceed to run into the store to grab some snack, which were stacked right by the entrance and dropping some role of film in the area directly about 10 feet across from it. Returned to her VAN, to check on the children and after making sure the children were okay, run back to the store to pay for the snack, as she did this, her younger son, saw her going back as it is

very natural, began crying for her, that drew attention of shoppers entering the store, the instant Appellant heard the store employee, speaking of a Van and children; she run out immediately to the VAN. As she attempted to depart Appellant was advised that the police were called, Appellant could have ignore them and drove off, instead she agreed to so innocently wait for the arrival of the police, confused why the people were so hostile toward her, not understanding what just occurred was going to permanently ruin her life which up to that date was pure and free from blemishes. Appellant waited for the police, with no fear, because she did not think she did anything wrong, she did [not] think she was getting in trouble, and especially because she did not mean to do wrong or break any law, she meant well, she though[t] after explaining to the police that she would go home and resume with her normal life the way it was prior to that incident. No, she was wrong, her life was never the same thereafter, her world crushed and turned to an endless ugly nightmare. And all because of her total ignorance to the fact that her so innocent well-meant running to the store for no more than few minutes could have put the children at risk. This is the story around the Appellant trip on the day of November 15, 2001 that turned her world upside down. This is Appellant story around the action she took she did not know her action would have led to putting children at risk, that led to her being charged and then in front of a Judge advised by a reckless lawyer made to enter a guilty plea to one count.

Appellant is confident, had she known she had a right to go in front of a jury to tell her state of mind in connection to the incident, that she had a greater chance that she would have been found GUILTY only of one thing "GUILTY OF IGNROANCE", [sic] or not GUILTY by reason of IGNROANCE [sic], if such ruling exist, because she did not have a mind of a criminal. As soon as Appellant heard the Judge sentencing, she realized how her lawyer just threw her in a big ugly []hole, Appellant started crying and pleading the Judge to forgive her for her ignorance, to which reply was with something like "Ignorance can't be excused", however the Judge advised Appellant of her chance to file a Motion to reconsider.

Appellant did file a Motion to reconsider, on her own but with no success. Appellant quickly realized of the dealing with the no sympathy legal system, in which shows no compassion to human ignorance. Appellants feels our legal system failed her when not wishing to recognize that a person merits a chance to demonstrate that they don't have criminal mind especially in situation like Appellant's when her acts was not negligently with respect to the material element of the offense, when she was not aware of any risk that could have led from her ignorance, the ignorance in which prevented the Appellant

> from begin conscious or aware of any wrong doing let alone the risk of putting children including her own irreplaceable children. Because we live in a cold non[] forgiven world instead of bettering and educating mother's or care giver's ability to properly protect all children, Appellant has been treated by Maryland's agencies like a MONSTOR as one who had knowingly put children's life including in the hand of harm.

Our task is not to re-weigh the evidence before the agency. We do not make new or fresh factual findings. As we said in *Employees' Retirement System of Baltimore County v. Brown*, 186 Md. App. 293, 312-14 (2006):

> Weighing the evidence, of course, is the ultimate function of the fact-finding tribunal.
>
> As a reviewing court determines whether an administrative tribunal was permitted, as a matter of law, to reach a given decision on the basis of what was before it, the test for the reviewing court to apply is the "substantial evidence" test. In *Stover v. Prince George's County*, 132 Md. App. 373, 381, 752 A.2d 686 (2000), Judge Kenney both explained the substantial evidence test and pointed out that the application of that test calls for both appellate deference and appellate discipline.
>
> > Rather, "[t]o the extent the issues on appeal turn on the correctness of an agency's findings of fact, *such findings must be reviewed under the substantial evidence test*." *Department of Health and Mental Hygiene v. Riverview Nursing Centre, Inc.*, 104 Md. App. 593, 602, 657 A.2d 372, cert. denied, 340 Md. 215, 665 A.2d 1058 (1995) (citation omitted). *The reviewing court's task is to determine "whether there was substantial evidence before the administrative agency on the record as a whole to support its conclusions*." *Maryland Commission on Human Relations v. Mayor and City Council of Baltimore*, 86 Md. App. 167, 173, 586 A.2d 37, cert. denied, 323 Md. 309, 593 A.2d 668 (1991). *The court cannot substitute its judgment for that of the agency, but instead must exercise a "restrained and disciplined judicial judgment so as not to interfere with the agency's factual conclusions*."
>
> (Emphasis supplied.)

Here, the agency's denial was permissibly based on reasons found in COMAR 13A.15.02.07A. The events underlying the agency's invocation of COMAR 13A.15.02.07A are well-established by evidence in the record, and are not disputed by appellant. As noted above, either or both of the factual findings about appellant's criminal record and the finding by Child Protective Services that she was responsible for indicated child neglect provide an adequate basis for the agency's decision. Put another way, on the basis of the record, a reasoning mind could have reasonably reached the same conclusion the agency did. The agency's denial was supported by substantial evidence and free from legal error.

II. Appellant's additional arguments

As noted above, appellant's brief raises, for the first time on appeal, arguments about a denial of due process. Because these arguments were not made previously, we cannot consider them on appeal. Rule 8-131(a); *Department of Health and Mental Hygiene v. Campbell*, 364 Md. 108, 123 (2001) ("Accordingly, the reviewing court, restricted to the record made before the administrative agency, may not pass upon issues presented to it for the first time on judicial review and that are not encompassed in the final decision of the administrative agency." (internal citation omitted)). Similarly, to the extent that appellant contends that the circuit court "erred in not using its authority to remand the ALJ's ruling," citing § 10-222(h) of the State Government Article, that argument is not properly before us because our review is focused on the agency's decision. "In examining the propriety of a trial court's consideration of a petition for judicial review, we analyze the agency's decision,

not the trial court's ruling." *Martin v. Allegany County Bd. of Educ*., 212 Md. App. 596, 605 (2013).

Appellant also contends that the circuit court "erred in applying that the reviewing court must review the Agency's decision is prima facie correct and presume[d] valid." But the circuit court correctly stated the applicable law. *See, e.g., Catonsville Nursing Home, Inc. v. Loveman*, 349 Md. 560, 569 (1998), in which the Court of Appeals said, in the context of an appeal of an agency decision following an unsuccessful petition for judicial review, "We are also obligated to 'review the agency's decision in the light most favorable to the agency,' since their decisions are prima facie correct and carry with them the presumption of validity." (Citations omitted.) *See also Bulluck, supra*, 283 Md. at 513.

JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.