

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Revocation of the Child Foster Care License of Randall and Melissa L. Hansen, Revocation of the Family Child Care License of Melissa L. Hansen, Maltreatment Determination of Melissa L. Hansen, and Disqualification of Melissa L. Hansen

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

This matter came before Administrative Law Judge James E. LaFave for an evidentiary hearing on March 16-17, 2016, at the Douglas County Service Center, Alexandria, Minnesota. The record closed on April 15, 2016, following the parties' submission of written closing arguments.

Daniel C. Lee, Assistant Douglas County Attorney, appeared on behalf of Douglas County Human Services Division (County) and the Minnesota Department of Human Services (Department). Chris Karpan, Chris Karpan Law, LLC, appeared on behalf of Randall and Melissa Hansen (Hansens).

STATEMENT OF THE ISSUES

1. Has the Department established by a preponderance of the evidence that M.H. is responsible for serious maltreatment?
2. Did the Department properly disqualify M.H. from direct access to children receiving child foster care and family child care services?
3. Has the Department established by a preponderance of the evidence that Ms. Hansen is responsible for serious and recurring maltreatment?
4. Did the Department properly disqualify Ms. Hansen from providing child foster care and family child care services?
5. Did the Department properly revoke the Hansens' child foster care license and Ms. Hansen's family child care license?

SUMMARY OF RECOMMENDATION

The Department failed to establish by a preponderance of the evidence that M.H. is responsible for serious maltreatment. Consequently, M.H.'s disqualification should be **RESCINDED**.

The Department also failed to establish by a preponderance of the evidence that Ms. Hansen is responsible for serious and recurring maltreatment. Therefore, Ms. Hansen's disqualification, and the resulting orders for revocation, should be **RESCINDED**.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Background

1. Melissa and Randall Hansen are unable to have biological children.¹ In 1997, the Hansens were licensed to provide child foster care in order to adopt their son Adam Hansen.² In 2003, the Hansens adopted Destiny Hansen and D.H.³

2. In 2003, the Hansens allowed their child foster care license to lapse so that they could focus on raising their three adopted children.⁴

3. In 2003, the County licensed Melissa Hansen to provide family child care services.⁵ Ms. Hansen operated a day care out of her home.⁶

4. In 2008, the County asked the Hansens if they would be willing to adopt nine-year-old M.H., Destiny Hansen's biological half-sister.⁷ Because M.H. already had three failed foster placements, the County asked the Hansens to commit to adopting M.H. before she was placed with them.⁸ The Hansens agreed.⁹ In order for M.H. to be placed with the Hansens, they needed to renew their child foster care license, which they did.¹⁰ The Hansens adopted M.H. in 2009.¹¹ Following M.H.'s adoption, the Hansens again let their child foster care license lapse.¹²

¹ Testimony (Test.) of Melissa Hansen.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

5. The Hansens were aware that M.H. was developmentally delayed.¹³ M.H. had never shown a propensity for violence or exhibited inappropriate sexual behavior.¹⁴

6. M.H. attended public school until seventh grade, when the Hansens learned that M.H. was having social difficulties with female classmates.¹⁵ In addition, M.H. had a boyfriend, whom she kept secret from her parents.¹⁶ The Hansens decided to home school M.H. because they wanted to protect her.¹⁷

7. In 2013, the County again contacted the Hansens and asked if they would foster K.J. and J.J.¹⁸ The Hansens agreed to provide respite care for the boys.¹⁹ In order to foster K.J. and J.J., the Hansens were required to renew their child foster care license, which they did.²⁰

8. J.J. had some behavioral problems, and he was temporarily placed at a residential treatment facility in Duluth.²¹ After this placement, the Hansens held a family meeting regarding whether they should adopt K.J. and J.J.²² The family unanimously agreed that they should adopt K.J. and J.J.²³

The Day Care

9. Ms. Hansen operates a day care on the main floor of her home.²⁴ In addition, the children play outside in the yard.²⁵ There is a swing set, a climbing apparatus, and a small, plastic playhouse in the yard.²⁶ These playhouses are very common at day cares.²⁷

10. On a typical day, the children arrive, eat breakfast, and then play while the younger children nap.²⁸ They eat lunch around 11:00 a.m.²⁹ After lunch, the older children watch a movie while the younger children nap again.³⁰ After the movie,

¹³ Test. of Randall Hansen.

¹⁴ Test. of R. Hansen; Test. of M. Hansen.

¹⁵ Test. of M. Hansen.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*; Test. of Barb Kleinschmidt.

²⁷ Test. of Stacy Wixo.

²⁸ Test. of M. Hansen.

²⁹ *Id.*

³⁰ *Id.*

Ms. Hansen sends the older children outside to play.³¹ She gets the younger children up from their naps and joins the older children outside.³²

11. Ms. Hansen generally sits on a swing, on the steps, or in the grass by the trees when she is outside.³³ Ms. Hansen's view of the playhouse was sometimes obstructed, depending on her location outside.³⁴

12. Ms. Hansen is not required by day care statutes or rules to be outside with school aged children.³⁵

13. At the day care, Ms. Hansen requires the playroom door to be open at all times.³⁶ In addition, the children are not allowed to play house as "mom" and "dad."³⁷ Rather, they can only play as "brother" and "sister."³⁸

14. M.H. was required to pass a background check because she was over 12 years old and a household member.³⁹ In addition, M.H. needed Sudden Infant Unexpected Death (SUID) and shaken baby training in order to interact with the day care infants.⁴⁰

15. M.H. was neither a staff member nor helper at the Hansens' foster care⁴¹ or Ms. Hansen's day care.⁴² M.H. did not supervise the day care or foster children in any capacity.⁴³ Adam Hansen and Destiny Hansen have also passed a background check and completed the SUID and shaken baby training.⁴⁴

16. Individuals under 18 years old are not legally allowed to supervise day care children.⁴⁵

17. M.H. is developmentally delayed and played with the day care children as a "peer."⁴⁶

³¹ *Id.*

³² *Id.*

³³ *Id.*; Test. of B. Kleinschmidt.

³⁴ Test. of B. Kleinschmidt; Test. of N. Wiebe.

³⁵ Test. of B. Kleinschmidt; Test. of N. Wiebe.

³⁶ Test. of M. Hansen.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Test. of N. Wiebe.

⁴⁰ Test. of B. Kleinschmidt

⁴¹ Test. of J. McLaughlin; Test. of M. Hansen.

⁴² Test. of M. Hansen; Test. of B. Kleinschmidt.

⁴³ Test. of M. Hansen.

⁴⁴ *Id.*

⁴⁵ Test. of B. Kleinschmidt.

⁴⁶ Test. of M. Hansen; Test. of R. Hansen; Test. of A. Pazdernik.

Incidents

18. On June 10, 2015, when Emily Amborn picked her children up from Ms. Hansen's day care, her five-year-old son jokingly told Ms. Amborn that "the kids are kissing, the kids are kissing."⁴⁷ He also told his mother and Ms. Hansen that 16-year-old M.H. had kissed 8-year-old I.F. in the playhouse.⁴⁸

19. Ms. Amborn asked her 7-year-old son about it later that night, and he told her about a "kissing club" that M.H. had created.⁴⁹ He stated that M.H. paired up the children and made them kiss in order to be in the club.⁵⁰

20. Ms. Amborn immediately texted this information to Ms. Hansen.⁵¹ Ms. Hansen responded, "Ok...I thought something was up...they've been too secretive."⁵²

21. Ms. Hansen contacted Jill Frisell, I.F.'s mother, to determine whether I.F. had reported anything about kissing.⁵³ Ms. Frisell informed Ms. Hansen that I.F. had told her that he had kissed M.H. on the cheek, and M.H. had pushed him away.⁵⁴

22. Ms. Hansen told Mr. Hansen that he needed to talk to M.H.⁵⁵ M.H. did not disclose any information that night.⁵⁶

23. Ms. Hansen also called Amber Pazdernik, who had two daughters at Ms. Hansen's day care, and asked her to ask her girls about the "kissing club."⁵⁷ Ms. Pazdernik similarly learned of the "kissing club" from her daughters.⁵⁸

24. On June 11, 2015, Ms. Hansen told the school aged children that she knew about the "kissing club."⁵⁹ She further informed them that they were not in trouble and that M.H. was not allowed to play with them anymore.⁶⁰ Ms. Hansen created a "truth club" so that the children could tell the truth.⁶¹ The children were visibly relieved.⁶²

⁴⁷ Test. of Emily Amborn; see *also* Ex. 14.

⁴⁸ Test. of M. Hansen.

⁴⁹ Test. of E. Amborn; Test. of M. Hansen.

⁵⁰ Exhibit (Ex.) 58.

⁵¹ *Id.*

⁵² *Id.*

⁵³ Test. of M. Hansen.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*; Test. of A. Pazdernik.

⁵⁹ Test. of M. Hansen.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

25. Ms. Hansen told the day care parents about the “kissing club” and the “truth club.”⁶³ M.H. spent the day in her room, away from the day care children.⁶⁴

26. Later that night, K.J. told Ms. Hansen that M.H. had “grabbed” him “in the nuts” during the “nervous game.”⁶⁵ The nervous game involved M.H. using two fingers to walk up K.J.’s thigh, asking “Are you nervous yet? Are you nervous yet? Are you nervous yet?”⁶⁶ K.J. further stated that M.H. had also “done that” to I.F.⁶⁷

27. On June 12, 2015, Ms. Hansen asked I.F. if M.H. had played the nervous game with him.⁶⁸ He said yes, and also admitted that she had grabbed his crotch.⁶⁹ M.H. again spent the day in her room, away from the day care children.⁷⁰

28. M.H. had told the children to keep the “kissing club” a secret or she would run away.⁷¹ M.H. denied touching I.F.’s crotch, but admitted to “backhanding” K.J. in the “nuts.”⁷² M.H. also admitted creating the “kissing club” and playing the “nervous game.”⁷³

29. M.H. had written a letter to I.F.⁷⁴ In the letter, M.H. stated that their first date should be a picnic, but they could also go hunting or fishing.⁷⁵ She further stated that she could not wait “until we can actually get married and have a wedding.”⁷⁶ She signed the letter “finally, your girl FOREVER.”⁷⁷

30. The earliest the “kissing club” could have started was June 5, 2015, because I.F. was in school, and not at the day care, until that date.⁷⁸ Therefore, the “kissing club” existed for no more than four days, June 5-10.⁷⁹

31. During that time, the children had been playing “restaurant” in the playhouse.⁸⁰ Ms. Hansen knocked on the roof of the playhouse several times, asked

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Ex. 30.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Test of M. Hansen; Test. of N. Wiebe.

⁷⁹ See Test. of M. Hansen; Test. of N. Wiebe.

⁸⁰ Test. of M. Hansen.

what the children were doing in there, and one of the kids would come out to take her order.⁸¹

32. On June 12, 2015, Ms. Hansen called the County to report the information she had learned about the “kissing club,” “the nervous game,” and the inappropriate touching.⁸²

Temporary Immediate Suspension Orders

33. On June 12, 2015, the County issued an Order of Temporary Immediate Suspension of the Hansens’ child foster care license and an Order of Temporary Immediate Suspension of Ms. Hansen’s child-family-care license based on “a serious incident of abuse by an individual who had access to children in your care.”⁸³ The County also removed K.J. from the Hansens’ home that day.⁸⁴ J.J. was still living at the residential treatment facility in Duluth.⁸⁵

34. On September 2, 2015, Administrative Law Judge Amy Chantry recommended that the Commissioner of the Department (Commissioner) rescind the Order of Temporary Immediate Suspension of the Hansens’ child foster care license and the Order of Temporary Immediate Suspension of Ms. Hansen’s family child care license.⁸⁶

35. On September 23, 2015, the Commissioner rescinded the Orders of Temporary Immediate Suspension.⁸⁷

36. On September 25, 2015, Ms. Hansen reopened her day care.⁸⁸ The County was legally required to notify the day care parents that the temporary immediate suspension had been rescinded, but it failed to do so.⁸⁹ Nonetheless, all of the day care children, except I.F., returned to Ms. Hansen’s day care, despite it having been closed for over three months.

The Hansens’ Response to the Incidents

37. After learning of the “kissing club” and the inappropriate touching, the Hansens immediately took M.H. to see a therapist.⁹⁰ M.H. visited the therapist once a

⁸¹ *Id.*

⁸² *Id.*

⁸³ Exs. 11, 12.

⁸⁴ Test. of M. Hansen.

⁸⁵ *Id.*

⁸⁶ *In re the Temporary Immediate Suspension of the Family Child Care License of Melissa Lynn Hansen and the Child Foster Care License of Randall Scott Hansen and Melissa Lynn Hansen*, Docket No. 67-1801-32618, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION (Sept. 2, 2015).

⁸⁷ Ex. 134.

⁸⁸ Test. of M. Hansen.

⁸⁹ Test. of B. Kleinschmidt.

⁹⁰ Ex. 135.

week or twice monthly between June 2015 and January 2016.⁹¹ The therapist opined that M.H. exhibits “significant attachment disorder symptoms” and “will be in therapy for an extended period of time.”⁹²

38. In July 2015, Dr. Richard Ascono conducted a psychosexual evaluation of M.H.⁹³ Dr. Ascono determined that although M.H.’s chronological age is 16, she functions developmentally as an 8-year-old.⁹⁴ M.H. has an I.Q. of 68, which is at the upper end of the mild intellectual disability.⁹⁵

39. Dr. Ascono further found that M.H.’s risk of dangerousness is less than 1 percent and therefore concluded that M.H. is “not a profound risk to public safety as a predatory offender.”⁹⁶ He found that her level of culpability is negligible, and she is at very low risk of recidivism.⁹⁷

40. The Hansens repeatedly requested the County’s help to create a safety plan, but the County did not respond.⁹⁸ The Hansens therefore developed their own safety plan for their home, and later the day care, with the help of M.H.’s therapist.⁹⁹ The safety plan includes the following provisions: M.H. is not allowed at the house while the day care children are present; M.H. is not allowed to be alone with younger children without an adult present; bedroom doors are kept open except when people are sleeping or changing their clothes; M.H. is not allowed to be home alone; M.H. gets dressed in the bathroom with the door closed.¹⁰⁰

41. M.H.’s therapist opined that the safety plan is “being strictly implemented,” and M.H. “feels comfortable with the safety plan and . . . is abiding by it.”¹⁰¹ The therapist further stated that “the current plan allows for the safety of everyone in the family and allows [M.H.] the opportunity to interact with all family members, and hopefully develop positive emotional connections with them. . . . [Ms. Hansen] and her husband are committed to maintaining this safety plan for as long as [M.H.] is in their house.”¹⁰²

⁹¹ *Id.*

⁹² *Id.*

⁹³ Ex. 103.

⁹⁴ Test. of Dr. Richard Ascono.

⁹⁵ *Id.*

⁹⁶ Ex. 103.

⁹⁷ Test. of R. Ascono.

⁹⁸ Test. of R. Hansen.

⁹⁹ *Id.*; Ex. 135.

¹⁰⁰ Test. of R. Hansen; Test. of M. Hansen.

¹⁰¹ Ex. 135.

¹⁰² *Id.*

42. M.H. is no longer present in the home with the day care children.¹⁰³ M.H. catches the school bus at 7:00 a.m.¹⁰⁴ M.H. goes to her grandmother's house after school.¹⁰⁵ Mr. Hansen picks her up at 5:00 p.m.¹⁰⁶ Ms. Hansen's day care is open from 7:00 a.m. until 5:00 p.m.¹⁰⁷

Maltreatment and Licensing Investigation

43. On June 15, 2015, Nancy Wiebe, a child protection worker for Douglas County Social Services, began an investigation into potential child maltreatment based on Ms. Hansen's report.¹⁰⁸

44. On July 14, 2015, Barb Kleinschmidt, a Douglas County day care licensing social worker, and Ms. Wiebe went to the Hansens' home to further investigate Ms. Hansen's report.¹⁰⁹

45. Ms. Kleinschmidt and Ms. Wiebe wanted to observe where the playhouse was located in the Hansens' yard.¹¹⁰ Ms. Kleinschmidt and Ms. Wiebe determined that the playhouse was located approximately 110 feet from the Hansens' back entry steps.¹¹¹

46. The playhouse is very small.¹¹² The door of the playhouse had been removed.¹¹³ The playhouse had two windows.¹¹⁴

47. The Hansens removed the playhouse from their residence after Ms. Wiebe and Ms. Kleinschmidt viewed its size and location.¹¹⁵

48. Ms. Wiebe conducted Cornerhouse interviews with several of the school aged children.¹¹⁶ In his interview, I.F. stated that M.H. had grabbed his penis and that it "hurt."¹¹⁷ He further indicated that M.H. had pinched his nipples.¹¹⁸

¹⁰³ Test. of M. Hansen. M.H. is no longer home schooled, but rather is enrolled at a private school. *Id.*

¹⁰⁴ Test. of R. Hansen.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Test. of Nancy Wiebe.

¹⁰⁹ Test. of B. Kleinschmidt.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Test. of M. Hansen.

¹¹⁶ Test. of N. Wiebe.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

49. In his interview, K.J. did not tell Ms. Wiebe that M.H. had grabbed his nuts.¹¹⁹

50. Ms. Wiebe determined that M.H. was “staff” in the day care and foster care after speaking with the Department.¹²⁰ According to the Department, M.H. was considered “staff” because she was required to pass a background study.¹²¹

51. Ms. Wiebe completed her investigation on August 4, 2015.¹²²

52. Ms. Wiebe concluded that M.H. was responsible for maltreatment by sexual abuse.¹²³ In the notification letter sent to M.H. regarding the maltreatment determination, Ms. Wiebe concluded that “there is a preponderance of evidence that you did sexually abuse and cause threatened sexual abuse to at least two of the day care children in the Melissa Hansen Day Care Facility. The concerns are that you touched the day care children in the crotch area and also exposed them to sexual situations and discussions.”¹²⁴ Ms. Wiebe further stated: “Our agency is sending you a letter as we consider that you were a helper/facility staff person responsible for caring for day care children. . . . Since the one child is considered a day care and foster child, you will receive a letter as a foster facility staff person in addition to this letter.”¹²⁵

53. Lastly, Ms. Wiebe concluded that M.H.’s maltreatment was serious and therefore disqualified her from “any position allowing direct contact with, or access to, persons receiving services from the licensed program.”¹²⁶

54. On August 4, 2015, Ms. Weibe also concluded that Ms. Hansen was responsible for maltreatment by neglect due to inadequate supervision.¹²⁷ Ms. Wiebe determined that Ms. Hansen’s maltreatment by neglect was serious because it involved sexual abuse.¹²⁸ She further determined that the maltreatment was recurring because “it happened to more than one child and on different days.”¹²⁹ Because the maltreatment was serious and recurring, Ms. Wiebe concluded that Ms. Hansen is disqualified from “any position allowing direct contact with, or access to, persons receiving services from the licensed program.”¹³⁰

55. On August 7, 2015, the Hansens requested reconsideration of Ms. Hansen’s maltreatment determination and subsequent disqualification.¹³¹ In addition,

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ Ex. 83.

¹²² Test. of N. Wiebe.

¹²³ Ex. 60.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ Ex. 59.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ See Ex. 7.

the Hansens requested reconsideration of M.H.'s maltreatment determination and disqualification.¹³²

56. On September 4, 2015, Ms. Kleinschmidt and Jennifer McLaughlin, a Douglas County foster-care licensing social worker, recommended that the Department revoke the Hansens' child foster care license, as well as Ms. Hansen's family child care license.¹³³ The County was required to notify the Hansens and the day care parents of this recommendation immediately, but the County did not do so until November 19, 2015.¹³⁴

57. In letters dated September 14, 2015, the County affirmed the maltreatment determinations and resulting disqualifications.¹³⁵ However, due to a misunderstanding regarding who was supposed to mail the notifications, these letters were not actually sent to the Hansens until nearly a month later.¹³⁶

58. On December 14, 2015, the Department issued an Order of Revocation of the Hansens' child foster care license and an Order of Revocation of Ms. Hansen's family child care license.¹³⁷

59. On December 21, 2015, Ms. Kleinschmidt notified the day care parents that Ms. Hansen's family child care license had been revoked.¹³⁸ The notification letter stated that "[w]hile the license is under revocation, the license holder may not operate."¹³⁹ This statement was untrue and led to a number of panicked parents calling Ms. Hansen.¹⁴⁰

60. The Hansens appealed the revocation of their child foster care license, and Ms. Hansen appealed the revocation of her family child care license.¹⁴¹

Adoption Proceedings

61. On December 9, 2015, District Court Judge David R. Battey ordered the County to allow the Hansens to have "reasonable supervised visitation" with K.J. and

¹³² See Ex. 6.

¹³³ Ex. 78.

¹³⁴ Test. of B. Kleinschmidt; Exs. 104-05; see also Minn. R. 9502.0341 (2015) (stating that "[a]s soon as the county recommends revocation, suspension, a conditional license, or temporary immediate suspension action, a notice of the circumstances for the action . . . shall be sent by the agency to the parents of children in care").

¹³⁵ Exs. 6, 7.

¹³⁶ Test. of B. Kleinschmidt; see also Minn. Stat. § 245C.22, subd. 1(c) (2014) (requiring the County to respond within 45 days of receiving a request for reconsideration).

¹³⁷ Exs. 4, 5.

¹³⁸ Ex. 106.

¹³⁹ *Id.*

¹⁴⁰ Test. of B. Kleinschmidt; Test. of M. Hansen; see also Ex. 5 (stating that "[a] timely request for a contested case hearing shall stay the family child care license revocation until the Commissioner issues a final order").

¹⁴¹ Ex. 2.

J.J.¹⁴² Judge Battey further stated that pending an evidentiary hearing, the County “shall not place the minor children for adoption with anyone other than Randall and Melissa Hansen.”¹⁴³

62. On February 23, 2016, following an evidentiary hearing, Judge Battey orally ordered K.J. to be immediately returned to the Hansens’ home and for J.J. to be returned with a gradual transition.¹⁴⁴

63. On March 1, 2016, Judge Battey formalized his bench ruling in a written order requiring the County to place K.J. and J.J. back in the Hansens’ home immediately because it “is the most suitable adoptive home to meet the minor children’s needs.”¹⁴⁵ Judge Battey ordered the County to “initiate the adoption proceedings as soon as possible and cooperate with the Hansens to quickly formalize the adoption.”¹⁴⁶

Notice and Order for Hearing, Hearing, and Post-Hearing Submissions

64. On December 31, 2015, the Department filed a Notice and Order for Prehearing Conference and Hearing (Notice and Order for Hearing) with the Office of Administrative Hearings.¹⁴⁷

65. The Notice and Order for Hearing states, in relevant part:

Disqualification of M.H. The County investigated the report. On August 4, 2015, the County substantiated that M.H. (who was required to have a background study) was responsible for maltreatment because: (1) s/he sexually abused and caused threatened sexual abuse of a foster child in Randall Hansen’s and Melissa Hansen’s child foster care program (License No. 1073812); and (2) s/he sexually abused and caused threatened sexual abuse of at least two children in Melissa Hansen’s family child care program (License No. 1029932). The county determined that the maltreatment was serious maltreatment and therefore disqualified M.H. from any position allowing direct contact with, or access to, persons served by the child foster care and family child care programs.

.....

Disqualification of Melissa Hansen. On August 4, 2015, the county substantiated that Melissa Hansen was responsible for: (1) serious maltreatment because she failed to supervise a foster child resulting in sexual abuse and threatened sexual abuse of the foster child; and (2)

¹⁴² Ex. 136.

¹⁴³ *Id.*

¹⁴⁴ *See* Ex. 102.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ Ex. 2.

serious and recurring maltreatment, because she failed to supervise the children in her family child care program, and, as a result, more than one child was sexually abused or threatened with sexual abuse on more than one occasion. The county notified Ms. Hansen that she was disqualified from any position allowing direct contact with, or access to, persons served by the child foster care and family child care programs.¹⁴⁸

66. The Administrative Law Judge held an evidentiary hearing on March 16-17, 2016.

67. Ms. Wiebe, Ms. Kleinschmidt, and Ms. McLaughlin, testified at the evidentiary hearing.¹⁴⁹ Sheri Fish, who replaced Ms. Kleinschmidt as the Douglas County day care licensing social worker following Ms. Kleinschmidt's retirement, also testified.¹⁵⁰

68. Ms. Kleinschmidt believes that Ms. Hansen has been a good day care provider.¹⁵¹ Ms. McLaughlin's overall impression of the Hansens as foster-care providers was "very positive."¹⁵²

69. Several day care parents testified on Ms. Hansen's behalf.¹⁵³

70. Ms. Pazdernik testified that Ms. Hansen provides "very good care" and that her daughters love Ms. Hansen.¹⁵⁴ Ms. Pazdernik considers Ms. Hansen a "second mom" to her children.¹⁵⁵

71. Ms. Amborn testified that there is no one she feels more comfortable leaving her children with than Ms. Hansen.¹⁵⁶ Her children cried and begged to go back when the day care was closed.¹⁵⁷ Ms. Amborn described Ms. Hansen as trustworthy, honest, good, kind, and loving.¹⁵⁸

72. Mandi Carlberg testified that Ms. Hansen is "super attentive" to the children in her day care.¹⁵⁹ Ms. Carlberg took vacation from work to testify on Ms. Hansen's behalf.¹⁶⁰

¹⁴⁸ *Id.*

¹⁴⁹ Test. of N. Wiebe; Test. of B. Kleinschmidt; Test. of J. McLaughlin.

¹⁵⁰ Test. of Sheri Fish.

¹⁵¹ Test. of B. Kleinschmidt.

¹⁵² Test. of J. McLaughlin.

¹⁵³ See Test. of A. Pazdernik; Test. of E. Amborn; Test. of Mandi Carlberg.

¹⁵⁴ Test. of A. Pazdernik.

¹⁵⁵ *Id.*

¹⁵⁶ Test. of E. Amborn.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ Test. of Mandi Carlberg.

¹⁶⁰ *Id.*

73. Stacy Wixo, a food representative for the United States Department of Agriculture (USDA) food program, also testified on Ms. Hansen's behalf.¹⁶¹ Ms. Wixo has been monitoring between 240-270 child-care providers in 10 different counties for the past 14 years.¹⁶² Ms. Wixo must visit each provider three times per year, with two of those visits being unannounced.¹⁶³

74. Ms. Wixo testified that Ms. Hansen always supervises the children and provides a "very good" level of care.¹⁶⁴ In fact, Ms. Wixo considers Ms. Hansen one of the "poster children" for the food program.¹⁶⁵ Ms. Wixo has never before testified on behalf of a day care provider, but believes it would be a loss to Douglas County if Ms. Hansen were no longer allowed to provide day care.¹⁶⁶

75. The parties submitted post-hearing closing arguments on April 15, 2016. The record closed on that date.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Commissioner and the Administrative Law Judge have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 14.50, 245A.07, .08, 245C.28 (2014).

2. The Hansens received due, proper, and timely notice of the time and place of the hearing. Accordingly, the Department has complied with all procedural requirements of rule and law.

Maltreatment of Minors

3. The Maltreatment of Minors Act, Minn. Stat. § 626.556 (2014 & Supp. 2015), defines "maltreatment" to include physical abuse, neglect, sexual abuse, and mental injury.¹⁶⁷

4. Sexual abuse means "the subjection of a child by a person responsible for the child's care, by a person who has a significant relationship to the child, as defined in section 609.341, or by a person in a position of authority, as defined in section 609.341, subdivision 10, to any act which constitutes a violation of section 609.342 (criminal sexual conduct in the first degree), 609.343 (criminal sexual conduct in the second degree), 609.344 (criminal sexual conduct in the third degree), 609.345 (criminal sexual

¹⁶¹ Test. of S. Wixo.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ Minn. Stat. § 626.556, subd. 10e(f).

conduct in the fourth degree), or 609.3451 (criminal sexual conduct in the fifth degree).”¹⁶⁸

5. ““Significant relationship” means a situation in which the actor is: (1) the complainant’s parent, stepparent, or guardian; (2) any of the following persons related to the complainant by blood, marriage, or adoption: brother, sister, stepbrother, stepsister, first cousin, aunt, uncle, nephew, niece, grandparent, great-grandparent, great-uncle, great-aunt; or (3) an adult who jointly resides intermittently or regularly in the same dwelling as the complainant and who is not the complainant’s spouse.”¹⁶⁹

6. ““Position of authority” includes but is not limited to any person who is a parent or acting in the place of a parent and charged with any of a parent’s rights, duties or responsibilities to a child, or a person who is charged with any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how brief, at the time of the act.”¹⁷⁰

7. Maltreatment by sexual abuse includes “threatened sexual abuse.”¹⁷¹ Maltreatment by “threatened sexual abuse” is defined by statute as including “the status of a parent or household member who has committed a violation which requires registration as an offender under section 243.166, subdivision 1b, paragraph (a) or (b), or required registration under section 243.166, subdivision 1b, paragraph (a) or (b).”¹⁷²

8. M.H. was not responsible for I.F. or K.J.’s care, she did not have a “significant relationship” with I.F. or K.J. as that term is statutorily defined, nor was she in a position of authority over I.F. or K.J. The Department has therefore failed to prove, by a preponderance of the evidence, that M.H. committed maltreatment by sexual abuse or threatened sexual abuse.

9. Maltreatment by neglect includes the “failure to provide for necessary supervision or child care arrangements appropriate for a child after considering factors as the child’s age, mental ability, physical condition, length of absence, or environment, when the child is unable to care for the child’s own basic needs or safety, or the basic needs or safety of another child in their care.”¹⁷³

10. Day care children must be supervised.¹⁷⁴ Supervision means “a caregiver being within sight or hearing of an infant, toddler, or preschooler at all times so that the caregiver is capable of intervening to protect the health and safety of the child. For the school age child, it means a caregiver being available for assistance and care so that the child’s health and safety is protected.”¹⁷⁵

¹⁶⁸ *Id.*, subd. 2(n).

¹⁶⁹ Minn. Stat. § 609.341, subd. 15 (2014).

¹⁷⁰ *Id.*, subd. 10 (2014).

¹⁷¹ Minn. Stat. § 626.556, subd. 2(n).

¹⁷² *Id.*

¹⁷³ *Id.*, subd. 2(g)(3).

¹⁷⁴ Minn. R. 9502.0365, subp. 5 (2015).

¹⁷⁵ Minn. R. 9502.0315, subp. 29a (2015).

11. A school aged child is “at least of sufficient age to have attended the first day of kindergarten, or is eligible to enter kindergarten within the next four months, but is younger than 13 years of age.”¹⁷⁶

12. For school aged children, the provider must provide opportunities for individual discussion about the happenings of the day and planning for activities; provide space and opportunity for games, activities, or sports using the whole body, outdoors, weather permitting; provide space and opportunity for individual rest and quiet time; allow increased freedom as the child demonstrates increased responsibility; provide opportunities for group experiences with other children; provide opportunities to develop or expand self-help skills or real-life experiences; and provide opportunities for creative and dramatic activity, arts and crafts, or field trips.¹⁷⁷

13. I.F. and K.J. were school aged children in June 2015, as were all of the other children in the “kissing club.”¹⁷⁸

14. Ms. Hansen was available for assistance and care when the incidents occurred. She was not legally required to be within sight or hearing of the school aged children. At all times relevant to these proceedings, Ms. Hansen properly supervised the school aged children in her care.

15. The Department has failed to prove, by a preponderance of the evidence, that Ms. Hansen committed maltreatment by neglect due to inadequate supervision.

Disqualification

16. An individual is disqualified from any position allowing direct contact with persons receiving services from the Department if fewer than seven years have passed since a determination of the individual’s substantiated serious or recurring maltreatment of a minor.¹⁷⁹

17. “Serious maltreatment” means “sexual abuse, maltreatment resulting in death, neglect resulting in serious injury which reasonably requires the care of a physician whether or not the care of a physician was sought, or abuse resulting in serious injury.”¹⁸⁰

18. “Recurring maltreatment” is defined as “more than one incident of maltreatment for which there is a preponderance of evidence that the maltreatment occurred and that the subject was responsible for the maltreatment.”¹⁸¹

¹⁷⁶ *Id.*, subp. 28 (2015); *see also* Minn. Stat. § 245A.02, subd. 16 (2014).

¹⁷⁷ Minn. R. 9502.0415, subp. 10 (2015).

¹⁷⁸ *See* Ex. 14.

¹⁷⁹ Minn. Stat. § 245C.15, subd. 4(b) (2014).

¹⁸⁰ Minn. Stat. § 245C.02, subd. 18 (2014).

¹⁸¹ *Id.*, subd. 16.

19. The Department bears the burden of demonstrating, by a preponderance of the evidence, that Respondent committed maltreatment which was serious or recurring.¹⁸²

20. Because the Department failed to establish by a preponderance of the evidence that M.H. committed serious maltreatment, M.H.'s disqualification should be **RESCINDED**.

21. Because the Department failed to establish by a preponderance of the evidence that Ms. Hansen committed serious or recurring maltreatment, Ms. Hansen's disqualification should be **RESCINDED**.

License Revocation

22. The Commissioner may suspend or revoke a license if the license holder fails to comply fully with applicable law or rules or has a disqualification which has not been set aside.¹⁸³

23. When applying sanctions, the Commissioner shall consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program.¹⁸⁴

24. As noted above, because neither M.H. nor Ms. Hansen committed maltreatment, i.e. the basis for their disqualifications, their disqualifications should be rescinded.

25. Accordingly, the Administrative Law Judge respectfully recommends that the Commissioner likewise **RESCIND** the Order for Revocation.

¹⁸² Minn. Stat. § 256.045, subd. 3b; see *also* Minn. R. 1400.8608, subp. 5 (2015) ("The party with the burden of proof shall have the burden of supporting its proposed action by a preponderance of the evidence.").

¹⁸³ Minn. Stat. § 245A.07, subd. 3.

¹⁸⁴ *Id.*, subd. 1.

RECOMMENDATION

The Administrative Law Judge recommends that the Commissioner of the Department of Human Services **RESCIND** M.H.'s maltreatment determination and subsequent disqualification. The Administrative Law Judge further recommends that the Commissioner **RESCIND** Melissa Hansen's maltreatment determination, disqualification, and the resulting Order of Revocation.

Dated: May 16, 2016


JAMES E. LAFAVE
Administrative Law Judge

Reported: Digitally Recorded
No transcript prepared

NOTICE

This Report is a recommendation, not a final decision. The Commissioner will make the final decision after a review of the record. Under Minn. Stat. § 14.61 (2014), the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten calendar days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Debra Schumacher, Administrative Law Attorney, PO Box 64998, St. Paul, MN 55164, (651) 431-4319 to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and Administrative Law Judge of the date the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a (2014). In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline imposed.

Under Minn. Stat. § 14.62, subd. 1 (2014), the Commissioner is required to serve her final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

The issues in this contested case are: (1) whether the Department has established by a preponderance of the evidence that M.H. committed maltreatment by sexual abuse or threatened sexual abuse; (2) whether the Department properly disqualified M.H. from having direct contact with children in a child foster care and family child care program; (3) whether the Department has established by a preponderance of the evidence that Ms. Hansen committed maltreatment by neglect; (4) whether the Department properly disqualified Ms. Hansen from providing child foster care and family child care services; and (5) whether the Department's orders for revocation should be affirmed. These issues are addressed in turn.

M.H.'s Maltreatment Determination

The Department determined that M.H. committed maltreatment by sexual abuse and threatened sexual abuse.¹⁸⁵ Sexual abuse means "the subjection of a child by a person responsible for the child's care, by a person who has a significant relationship to the child, as defined in section 609.341, or by a person in a position of authority, as defined in section 609.341, subdivision 10, to any act which constitutes a violation of section 609.342 (criminal sexual conduct in the first degree), 609.343 (criminal sexual conduct in the second degree), 609.344 (criminal sexual conduct in the third degree), 609.345 (criminal sexual conduct in the fourth degree), or 609.3451 (criminal sexual conduct in the fifth degree)."¹⁸⁶ "Sexual abuse" is defined to include "threatened sexual abuse."¹⁸⁷ Threatened sexual abuse includes "the status of a parent or household member who has committed a violation which requires registration" as a predatory offender.¹⁸⁸

Under the definition set forth above, the first step in analyzing whether a situation meets the definition of "sexual abuse" is to determine if the person who allegedly committed the sexual abuse was either (a) responsible for the child's care, (b) had a significant relationship with the child, or (c) was in a position of authority over the child. M.H. did not meet any of those criteria in this case.

Responsible for Care

The record evidence demonstrates that M.H. was not responsible for I.F. or K.J.'s care. Ms. Kleinschmidt testified that individuals under 18 years of age are not allowed to supervise day care children.¹⁸⁹ Further, Ms. McLaughlin testified that there is no evidence in the record to support a conclusion that M.H. was a foster care staff member.¹⁹⁰ Lastly, Ms. Hansen testified that M.H. was not allowed to be in charge of

¹⁸⁵ Ex. 160.

¹⁸⁶ Minn. Stat. § 626.556, subd. 2(n).

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ Test. of B. Kleinschmidt.

¹⁹⁰ Test. of J. McLaughlin.

the other children or tell them what to do.¹⁹¹ Ms. Hansen repeatedly reminded M.H. of this fact.¹⁹²

Developmentally, M.H. is eight years old.¹⁹³ She played with the other school aged children as a peer; they were her friends.¹⁹⁴ The letter M.H. wrote to I.F. supports this conclusion.¹⁹⁵ She talked about their first date, getting married, and having children together.¹⁹⁶ She signed the letter, “finally, your girl FOREVER.”¹⁹⁷ It sounds like an 8-year-old girl wrote this letter.¹⁹⁸ M.H. was not responsible for I.F. and K.J.’s care.

Significant Relationship

The statute also includes abuse by a person who has a significant relationship to the child. "Significant relationship" means a situation in which the actor is: (1) the complainant's parent, stepparent, or guardian; (2) any of the following persons related to the complainant by blood, marriage, or adoption: brother, sister, stepbrother, stepsister, first cousin, aunt, uncle, nephew, niece, grandparent, great-grandparent, great-uncle, great-aunt; or (3) an adult who jointly resides intermittently or regularly in the same dwelling as the complainant and who is not the complainant's spouse."¹⁹⁹

M.H. did not have a “significant relationship” with I.F. or K.J. because M.H. is not related to I.F., and she is not an adult with whom he resides. K.J. was a foster child when the contact occurred; M.H. and K.J. were therefore not yet related. Although M.H. and K.J. lived together “in the same dwelling,” M.H. was not an adult. Therefore, under the plain language of the statute, M.H. did not have a significant relationship with I.F. or K.J.

Position of Authority

Lastly, M.H. was not in a position of authority over I.F. or K.J. "Position of authority" includes but is not limited to any person who is a parent or acting in the place of a parent and charged with any of a parent's rights, duties or responsibilities to a child, or a person who is charged with any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how brief, at the time of the act."²⁰⁰ As discussed above, M.H. did not supervise the school aged children; she was their peer.²⁰¹ Ms. Hansen often reminded M.H. that she was not in charge or allowed to tell the children what to do.²⁰²

¹⁹¹ Test. of M. Hansen.

¹⁹² *Id.*

¹⁹³ Test. of R. Ascono.

¹⁹⁴ Test. of A. Pazdernik.

¹⁹⁵ Ex. 30.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ Minn. Stat. § 609.341, subd. 15.

²⁰⁰ *Id.*, subd. 10.

²⁰¹ Test. of B. Kleinschmidt; Test. of M. Hansen; Test. of R. Ascono; Test. of A. Pazdernik.

²⁰² Test. of M. Hansen.

In sum, the County has failed to demonstrate, by a preponderance of the evidence, that M.H. committed maltreatment by sexual abuse or threatened sexual abuse.

M.H.'s Disqualification

An individual is disqualified from any position allowing direct contact with persons receiving services from the Department if fewer than seven years have passed since a determination of the individual's substantiated serious or recurring maltreatment of a minor.²⁰³ Sexual abuse constitutes serious maltreatment.²⁰⁴ But, as discussed above, M.H. did not commit maltreatment by sexual abuse or threatened sexual abuse. Therefore, her disqualification is in error.

The Department has failed to satisfy its burden of proving, by a preponderance of the evidence, that M.H. committed serious maltreatment. As a result, M.H.'s disqualification should be **RESCINDED**.

Ms. Hansen's Maltreatment Determination

The County determined that Ms. Hansen committed maltreatment by neglect due to inadequate supervision.²⁰⁵ Maltreatment by neglect includes the "failure to provide for necessary supervision or child care arrangements appropriate for a child after considering factors as the child's age, mental ability, physical condition, length of absence, or environment, when the child is unable to care for the child's own basic needs or safety, or the basic needs or safety of another child in their care."²⁰⁶

Day care children must be supervised.²⁰⁷ Supervision means "a caregiver being within sight or hearing of an infant, toddler, or preschooler at all times so that the caregiver is capable of intervening to protect the health and safety of the child. For the school aged child, it means a caregiver being available for assistance and care so that the child's health and safety is protected."²⁰⁸ A school aged child is "at least of sufficient age to have attended the first day of kindergarten, or is eligible to enter kindergarten within the next four months, but is younger than 13 years of age."²⁰⁹ I.F. and K.J. were school aged children in June 2015, as were the other children in the "kissing club."²¹⁰

For school aged children, the provider must provide opportunities for individual discussion about the happenings of the day and planning for activities; provide space and opportunity for games, activities, or sports using the whole body, outdoors, weather permitting; provide space and opportunity for individual rest and quiet time; allow

²⁰³ Minn. Stat. § 245C.15, subd. 4(b).

²⁰⁴ Minn. Stat. § 245C.02, subd. 18.

²⁰⁵ Ex. 59.

²⁰⁶ Minn. Stat. § 626.556, subd. 2(g)(3).

²⁰⁷ Minn. R. 9502.0365, subp. 5.

²⁰⁸ Minn. R. 9502.0315, subp. 29a.

²⁰⁹ *Id.*, subp. 28; see also Minn. Stat. § 245A.02, subd. 16.

²¹⁰ See Ex. 14.

increased freedom as the child demonstrates increased responsibility; provide opportunities for group experiences with other children; provide opportunities to develop or expand self-help skills or real-life experiences; and provide opportunities for creative and dramatic activity, arts and crafts, or field trips.²¹¹

The statute does not require Ms. Hansen to be within sight or sound of school aged children at all times. Rather, the statute merely requires her to be available to provide assistance and care so that the child's health and safety is protected. Ms. Hansen was outside when the "kissing club" met.²¹² Several times, she walked over to the playhouse, knocked on the roof, and asked the children what they were doing.²¹³ By all accounts, Ms. Hansen was a conscientious caregiver who fully supervised the children.²¹⁴ The record evidence supports a conclusion that Ms. Hansen was available to provide assistance and care to the school aged children.

Moreover, the statute requires Ms. Hansen to give school aged children "increased freedom" as they demonstrate "increased responsibility," and the children had never given Ms. Hansen any reason to suspect sexual impropriety. In fact, when the children were in the playhouse and she knocked on the roof, they told her they were playing restaurant.²¹⁵ One of the children came out to take her order.²¹⁶ Nonetheless, Ms. Kleinschmidt testified that knocking on the playhouse was not enough; she contends that if Ms. Hansen had actually looked into the playhouse, she would have seen what was happening and intervened.²¹⁷ The record does not support this assertion. The County failed to demonstrate exactly when M.H. touched I.F. and K.J. It might have been in the playhouse during the kissing game, or it might have occurred at another time. Despite Ms. Kleinschmidt's implicit assertion that the "kissing club" would have been obvious if Ms. Hansen had merely looked into the playhouse, it is extremely unlikely that the children would have continued playing their game knowing that Ms. Hansen was nearby. Therefore, even if she had looked into the playhouse, it is unlikely Ms. Hansen would have been aware of the inappropriate activities taking place.

The County places significant emphasis on the fact that Ms. Hansen's view of the playhouse was obstructed from her normal vantage points in the yard.²¹⁸ This argument is misplaced. As noted above, Ms. Hansen was not legally required to be within sight and sound of the school aged children. Therefore, Ms. Hansen was not required to have an unobstructed view of the playhouse, and she was not required to look into the playhouse. In fact, Ms. Hansen was not even required to be outside. If Ms. Hansen had been inside the house when the "kissing club" met, this still would not have constituted failure to supervise because the children in the "club" were school aged and Ms. Hansen was available to provide assistance and care.

²¹¹ Minn. R. 9502.0415, subp. 10.

²¹² Test. of M. Hansen.

²¹³ *Id.*

²¹⁴ Test. of E. Amborn; Test. of A. Pazdernik; Test. of S. Wixo.

²¹⁵ Test. of M. Hansen.

²¹⁶ *Id.*

²¹⁷ Test. of B. Kleinschmidt.

²¹⁸ See Test. of N. Wiebe; Test. of B. Kleinschmidt.

Importantly, the issue of whether Ms. Hansen properly supervised the children in her care was also at issue in the earlier temporary immediate suspension proceeding. There, Administrative Law Judge Chantry found that the Department's contention that Ms. Hansen failed to properly supervise the children was "not supported by the evidence."²¹⁹ Further, in her order ruling on the temporary immediate suspension the Commissioner concurred "in the Administrative Law Judge's conclusion that the Department failed to establish lack of supervision."²²⁰

The County's implicit contention that because something inappropriate occurred, Ms. Hansen was neglectful, adds requirements to the law that simply are not there. The County has failed to demonstrate, by a preponderance of the evidence, that Ms. Hansen committed maltreatment by neglect due to inadequate supervision.

Ms. Hansen's Disqualification

An individual is disqualified from any position allowing direct contact with persons receiving services from the Department if fewer than seven years have passed since a determination of the individual's substantiated serious or recurring maltreatment of a minor.²²¹ The Department concluded that Ms. Hansen committed both serious and recurring maltreatment.²²² But, as discussed above, Ms. Hansen did not commit maltreatment by neglect. Therefore, her disqualification is in error.

In sum, the Department has failed to satisfy its burden of proving, by a preponderance of the evidence, that Ms. Hansen committed serious or recurring maltreatment. As a result, Ms. Hansen's disqualification should be **RESCINDED**.

License Revocation

The Commissioner may suspend or revoke a license if the license holder fails to comply fully with applicable law or rules, or has a disqualification which has not been set aside.²²³ When applying sanctions, the Commissioner shall consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program.²²⁴

Because the Department failed to prove that M.H. or Ms. Hansen committed maltreatment, which was the basis for their disqualifications, their disqualifications should be rescinded. Similarly, the orders of revocation, which are based on the disqualifications, should also be rescinded.

²¹⁹ Ex. 101.

²²⁰ Ex. 134.

²²¹ Minn. Stat. § 245C.15, subd. 4(b).

²²² Ex. 59.

²²³ Minn. Stat. § 245A.07, subd. 3.

²²⁴ *Id.*, subd. 1.

Moreover, it should be noted that Ms. Hansen has provided an important service to children in need and the people of this state for nearly 20 years. The Department asked the Hansens to foster and adopt five of their six children.²²⁵ In fact, the Department asked the Hansens to commit to adopting M.H. before they had even met her, and the Hansens agreed.²²⁶ By all accounts, the Hansens, particularly Ms. Hansen, have provided exemplary service to the County.²²⁷

In addition, the Hansens instituted a safety plan without the County's help, despite numerous requests for assistance.²²⁸ Ms. Hansen immediately removed M.H. from the day care despite no requirements that she do so.²²⁹ The Hansens took M.H. to counseling and for a psychosexual evaluation.²³⁰ Judge Battey's words are apt here: "The evidence . . . convincingly suggests that the incidents leading to the Hansens' license suspension were isolated and will likely not occur in the future. Further, the Hansens have acted appropriately and responsibly since these incidents came to light. They immediately notified the appropriate agencies; and despite [the County's] unwillingness to work with them, have independently taken remedial actions to ensure that their children will not be at risk again."²³¹ In her order rescinding the temporary immediate suspension, the Commissioner specifically found that "the evidence establishes that Licensee (Ms. Hansen) responded appropriately after she learned about the events in question."²³²

The severity of a licensing sanction must reflect the seriousness of the violation, but it should not exceed the action necessary to protect the public and deter such conduct in the future.²³³ Here, revocation of the Hansens' child foster care license and Ms. Hansen's family child care license were drastic measures not necessary to protect the public or deter future conduct.

In sum, the Administrative Law Judge recommends that the Commissioner rescind the maltreatment determinations, the disqualifications, and the orders of revocation.

J. E. L.

²²⁵ Test. of M. Hansen.

²²⁶ *Id.*

²²⁷ Test. of B. Kleinschmidt; Test. of J. McLaughlin; Test. of S. Wixo.

²²⁸ Test. of M. Hansen; Test. of R. Hansen.

²²⁹ Test. of M. Hansen.

²³⁰ Exs. 103, 135.

²³¹ Ex. 136.

²³² Ex. 134.

²³³ *In re Revocation of Family Child Care License of Burke*, 666 N.W.2d 724, 728 (Minn. Ct. App. 2003).