

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 William Johnson and
Amy Knott-Johnson and the Maltreatment
Determination and Disqualification of William
Johnson

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

The above-entitled matter came before Administrative Law Judge Stephen D. Swanson on May 27 and August 3, 2016, at the Dodge County Administrative Hearing Room, Dodge County Courthouse, 22 East 6th Street, Mantorville, Minnesota, for an evidentiary hearing on the appeal of William Johnson and Amy Knott-Johnson from the Order of Revocation dated December 2, 2015, and the appeal of William Johnson of his maltreatment and disqualification determinations.

Crysta Parkin, Assistant Dodge County Attorney, appeared on behalf of the Minnesota Department of Human Services (Department). Christa J. Groshek, Groshek Law, P.A., appeared on behalf of William Johnson and Amy Knott-Johnson (Appellants).

At the beginning of the hearing on May 27, 2016, the Administrative Law Judge, pursuant to Minn. Stat. § 14.60, subd. 2 (2016), and with the agreement of the parties, closed the hearing to the public and ordered that all exhibits received in evidence and the hearing record be placed under seal.

Exhibits 1-20 and 101-114 were received in evidence and placed under seal. Michelle Freiderich and Gregory Schramm testified on behalf of the Department. William Johnson, Amy Ann Knott-Johnson, Matthew David Coy, Timothy Dennis Jensen, and Stacy Lynn Newman testified on behalf of Appellants.

The hearing record closed on August 3, 2016.

STATEMENT OF THE ISSUES

1. Did the Department demonstrate, by a preponderance of the evidence, that Appellant William Johnson was responsible for the maltreatment by physical abuse of a foster child, T.H., sometime in March 2014?
2. Did the Department properly permanently disqualify Appellant William Johnson for serious maltreatment from direct contact with persons receiving services?

3. Did the Department demonstrate, by a preponderance of the evidence, that Appellant William Johnson used corporal punishment to discipline T.H.?

4. Did the Department demonstrate reasonable cause for the revocation of Appellants' child foster care license?

5. If the Department demonstrated reasonable cause for the revocation of Appellants' child foster care license, did Appellants demonstrate, by a preponderance of the evidence, that they were in full compliance with the laws and rules the Department alleges they violated at the time that the Department alleges the violations of law or rule occurred?

SUMMARY OF RECOMMENDATION

The Administrative Law Judge concludes that the Department failed to demonstrate, by a preponderance of the evidence, that Appellant William Johnson was responsible for the maltreatment by physical abuse of a foster child, T.H., sometime in March 2014, or that he used corporal punishment to discipline T.H. Therefore, the Administrative Law Judge recommends that the Commissioner of the Department of Human Services (Commissioner) rescind the order permanently disqualifying Appellant William Johnson from direct contact with persons receiving services, and rescind the order revoking Appellants' child foster care license.

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

FINDINGS OF FACT

1. Prior to the Department's issuance of the Order of Revocation dated December 2, 2015, Appellants, who are married to each other, had provided licensed child foster care services out of their home in West Concord, Minnesota, since February 2011 (License No. 1059547 CFC). Appellants have two young sons, ages seven and nine, who reside with them. Appellant William Johnson was a foster child and had a positive relationship with his foster parents and a positive experience in foster care. Appellants decided to become licensed child foster care parents to provide the same kind of experience that Appellant William Johnson enjoyed to children in need of foster care services, and to begin the process of adopting two additional children. Between February 2011 and September 2014, Appellants provided child foster and respite care services for eight children, including one child who suffered from shaken baby syndrome. Appellants disciplined the children through time outs in a child's rocking chair located in plain view in the family room of the foster home. Prior to the incident that is at issue in this matter, there had been no complaints to Dodge County licensing officials regarding the child foster care services provided by Appellants.¹

¹ Testimony (Test.) of Amy Ann Knott-Johnson; Test. of William James Johnson; Exhibits (Ex.) 1, 2, 8, 9, 14, 114 at 2.

2. On December 3, 2013, the mother of T.H., a female child born November 2, 2011, gave birth to a second daughter, and the mother and newborn came to live in Appellants' home. T.H. was residing in a different foster care home at the time, but joined them in Appellants' home later in December 2013. The mother was arrested in January 2014, and Appellants became the foster parents of T.H. and her younger sister. At the time she arrived in Appellants' home, and while she resided there, T.H. exhibited several documented behavioral problems, including un-socialized behavior; temper tantrums; destructive acting out physically, including biting, hitting, and scratching others; and breaking toys. She also suffered from significant swelling around mosquito bites, which in one instance required medical treatment. T.H. had been physically abused in the home of her natural mother. Before coming to Appellants' home, T.H. had been asked to leave a child care program due to her behavioral problems. The parental rights of the parents of T.H. and her sister were terminated. Appellants applied to adopt T.H. and her sister and were pre-approved for adoption by Dodge County Human Services and the presiding judge of the Juvenile Division of the Third Judicial District Court.²

3. Appellants worked different shifts outside the foster home, and in December 2014, contracted with a licensed family child care provider to provide child care services during the day to T.H., her sister, and Appellants' two sons in the child care provider's home. The child care provider was a mandated reporter of child abuse. On one occasion, Appellant Amy Knott-Johnson reported to the child care provider that one of the child care provider's children had inflicted a bruise on T.H. The child care provider denied having any knowledge concerning the bruise. Appellant Knot-Johnson reported the incident to a Dodge County social worker.³

4. Sometime in March 2014, while Appellant William Johnson was caring for T.H. in the foster care home, T.H. required assistance with wiping following a bowel movement on the toilet. Appellant Johnson bent her forward and either during the wiping process or when he placed her in the bathtub for bathing and additional cleaning, T.H. presented with some blood on her nose. Appellant Johnson wiped the blood off and there was no further bleeding. Appellant Johnson is a volunteer with the West Concord Volunteer Fire Department, has provided emergency services at serious traffic accidents, and has treated several people with bloody noses. T.H. did not suffer a bloody nose that required treatment to forestall further bleeding.⁴

5. Sometime in March or April 2014, when Appellant Johnson was leaving the four children with the child care provider, he had a conversation with the provider about the children, and disclosed to the provider the incident when T.H. presented with blood on her nose, and described the incident as an accidentally inflicted bloody nose. The day care provider never said anything about the incident to Appellants.⁵

² Test. of A. Knott-Johnson; Test. of W. Johnson; Test. of Michelle Freiderich; Exs. 17, 101-111.

³ Test. of A. Knott-Johnson; Test. of W. Johnson.

⁴ Test. of W. Johnson; Test. of Matthew David Coy.

⁵ Test. of W. Johnson; Ex. 1 at 7.

6. On August 15, 2014, Appellants took a five-day vacation. They left their two sons with relatives. They entered into an agreement with the child care provider for the 24-hour care of T.H. and her sister for the five days and nights that they would be absent. With the prior approval of Dodge County foster care officials, Appellants agreed to pay the child care provider, for the care of T.H. and her sister, the amount that Appellants were receiving in foster care payments for T.H. and her sister. Appellants made the payment to the child care provider. Two days following receipt of the payment and while Appellants were on vacation, the child care provider advised Appellant Knott-Johnson by electronic communication that she had been under charging Appellants for her child care services for the four children, and requested a substantial increase in the child care services fee going forward. Appellants returned from vacation on August 20, 2014, and in a conversation with the child care provider on August 21, 2014, Appellant Knott-Johnson advised the child care provider that they would not pay the increased fees and would seek child care services elsewhere.⁶

7. On August 27, 2014, the child care provider filed a report with Dodge County Child Protective Services alleging that Appellant William Johnson had physically abused T.H. sometime at the beginning of 2014. More particularly, the child care provider alleged that “[s]ometime in the beginning of the year,” Appellant Johnson brought T.H. to the provider’s home “and she had a sore looking nose . . . looking like having a cold and wiping often with a tissue.” The child care provider reported further that when she asked Appellant Johnson about the nose, he stated “that she [T.H.] had an attitude and was talking back so he went to pop her in the mouth and gave her a bloody nose instead.” In her report, the child care provider also alleged as follows: two weeks after the conversation with Appellant Johnson, Appellant Knott-Johnson brought T.H. to the provider’s home with “a bruise on her left cheek and under her eye [that] was red all the way to her ear;” that on August 22, 2014, at the provider’s home, Appellant Johnson disciplined T.H. for playing with a lighted candle by grabbing her arm, turning her around, and spanking her in anger; and that the next day, when T.H. was again playing with the candle, Appellant Johnson grabbed T.H.’s hand and slapped it. The child care provider took photographs of T.H.’s ear.⁷

8. Because of the potential conflict of interest presented by Dodge County’s pre-approval of Appellants’ application to adopt T.H. and her sister, the child abuse report was referred to Olmsted County for investigation. The investigation was conducted by Michelle Freiderich, Senior Social Worker, Olmsted County Community Services Department, and Gregory Schramm, Olmsted County Child Protective Services. The report was received from Dodge County on August 27, 2014.⁸

9. On August 27, 2014, in a telephone conversation, Mr. Schramm reported the alleged abuse to the West Concord Chief of Police, who stated that she would assign the case to Patrol Officer Michael Erdman for investigation.⁹

⁶ Test. of A. Knott-Johnson; Test. of W. Johnson.

⁷ Ex. 1 at 1, 2.

⁸ Test. of M. Freiderich; Test. of Gregory Schramm; Ex. 1 at 2.

⁹ Test. of G. Schramm; Ex. 1 at 2.

10. On August 27, 2014, Ms. Freiderich, Mr. Schramm, and Officer Erdman interviewed Appellant William Johnson at Appellants' home. Appellant Johnson did not know any of the three individuals, and was unnerved by the interview. During the interview, which was audio recorded, Ms. Freiderich and Mr. Schramm disclosed the report and asked Appellant Johnson for his response. He responded as follows: that he remembered the incident, which occurred around March; that it happened in the bathroom of Appellants' home when T.H. was around the toilet or he was removing her from the bath tub; that he couldn't remember exactly how it happened; that he caused it by physical contact with T.H., but that the contact was accidental; that he did not remember any bruising on T.H.'s cheek; that T.H. is very allergic to mosquito bites, which cause swelling; that he would touch T.H.'s hand softly, but did not swat her hand; that he was aware of the foster care licensing rules prohibiting the use of corporal punishment; that Appellants did not spank T.H. or her sister; and that Appellants had started working with a therapist regarding strategies for parenting T.H. Appellant Johnson provided photographs that he said depicted the swelling around mosquito bites on T.H.'s face.¹⁰

11. On August 28, 2014, Ms. Freiderich and Mr. Schramm met with Appellant Knott-Johnson, T.H., and the other three children at Appellants' home; Appellant William Johnson was not present. Appellant Knott-Johnson responded to the report of alleged child abuse as follows: that she slapped T.H.'s hand once when T.H. was reaching for a hot pan on the stove; that Appellants have never spanked T.H. or her sister; that she vaguely remembered a bruise on T.H.'s cheek or chin, but that she did not know the cause of the bruise; that T.H. had been bitten and pinched by other children in the child care provider's home; and that T.H.'s behavioral problems are frustrating, but that Appellants are working with a therapist to better manage T.H.'s behaviors and parent her more effectively. T.H. said that she did not remember any injury to her nose.¹¹

12. On August 28, 2014, Officer Erdman met with the reporter at her home, and digitally recorded the interview. The reporter told Officer Erdman that Appellants respond to T.H.'s behavior by yelling at her. She reported that on August 22, 2014, when Appellant William Johnson came to pick up T.H., he grabbed her by the arm and spanked her for disobeying his instruction to stop playing with some candles, and then yelled at her when she started to cry. The reporter reiterated her original report regarding the bloody nose, but added that Appellant Johnson had told her that he gave T.H. the bloody nose when they were in a bedroom of Appellants' home. The reporter stated that a while after Appellant Johnson had reported the bloody nose incident to her, T.H. appeared at the reporter's home with some odd bruising on her cheek that led back to her ear, and that no one was able to give her a straight forward answer as to the cause of the bruising. At Officer Erdman's request, the reporter electronically transferred to him two photographs that she had taken of the bruising. The reporter also stated that Appellant Johnson spanked T.H. at the reporter's home when T.H. walked in front of a swing set being used by another child. Officer Erdman prepared a

¹⁰ Test. of M. Freiderich; Test. of G. Schramm; Test. of W. Johnson; Ex. 1 at 3, 4.

¹¹ Test. of M. Freiderich; Test. of G. Schramm; Test. of A. Knott-Johnson; Ex. 1 at 4, 5.

written report of the interview with the reporter and forwarded it to Olmsted County. Officer Erdman also transmitted copies of the photographs to Mr. Schramm.¹²

13. On September 3, 2014, Ms. Freiderich and Mr. Schramm interviewed the reporter by telephone. The reporter reiterated some of the allegations in the original report, and added that a few weeks after the nose bleed conversation with Appellant William Johnson, Appellant Knott-Johnson brought T.H. to the child care provider's home and the child care provider noticed that T.H. had a bruise to her ear. Neither T.H. nor either Appellant could explain to the reporter the cause of the injury. The reporter also described two other incidents, one where Appellant Knott-Johnson yelled at T.H. when T.H. indicated that she wished to be picked up by the reporter, and a second where Appellant Johnson directed T.H. to stay away from the swings, and when she went back towards the swings, he picked T.H. up and spanked her. During the telephone interview, the reporter stated that she waited several months to file the report because she had observed subsequent instances of the use of corporal punishment by Appellant Johnson over time.¹³

14. On September 3, 2014, Mr. Schramm forwarded the photographs of the ear injury to a doctor at the Mayo Clinic, and in a telephone conversation that day with the doctor, the doctor opined that the apparent injuries were consistent with several causes, including a bleeding disorder, an infection, or non-accidental trauma caused by a hit or a grab, and that the doctor could not tell more without a physical examination.¹⁴

15. Initially, Mr. Schramm did not remove T.H. and her sister from the Appellants' care, but instead developed a rapid response safety plan to be implemented by Appellants. The safety plan required that any contact with the foster children by Appellant William Johnson be supervised by another adult. Appellants implemented the plan for four days and then T.H. and her sister were removed from Appellants' care.¹⁵

16. On September 9, 2014, the Olmsted County investigators and the Dodge County child protective services and social workers determined that Appellant William Johnson had committed maltreatment, and that services were needed. On that date, the investigators and the Dodge County workers met with Appellants at their home and explained the determination and Appellants' appeal rights. On that date, T.H. and her sister were removed from Appellants' home.¹⁶

17. On September 9, 2014, Mr. Schramm issued a combined letter notification of maltreatment and disqualification to Appellants, and the letter was sent by US Mail to Appellants on September 12, 2014. The stated basis for the determination of maltreatment and the disqualification of Appellant William Johnson was the investigators' conclusion that there was a preponderance of the evidence that he had committed maltreatment of a child by physical abuse and that the maltreatment was

¹² Ex. 10, Attachment 1, Supplemental Report; Test. of G. Schramm.

¹³ Test. of M. Freiderich; Test. of G. Schramm; Ex. 1 at 7, 8.

¹⁴ Test. of G. Schramm; Ex. 1 at 8, 9.

¹⁵ Test. of G. Schramm; Test. of A. Knott-Johnson; Test. of W. Johnson.

¹⁶ Test. of M. Freiderich; Test. of G. Schramm; Ex. 1 at 10-13; Ex. 17.

serious. The letter sets forth the further determination that Appellant Johnson poses an imminent risk of harm to persons served by Appellants' child foster care program. The letter orders him to immediately remove himself from direct contact with persons served by the program.¹⁷ The sole basis for the determination of maltreatment by physical abuse was the alleged bloody nose incident. The basis for the determination that the maltreatment was serious was the presence of blood. On September 10, 2014, Mr. Schramm closed his investigation.¹⁸

18. On September 12, 2014, Ms. Freiderich issued a Correction Order to Appellants finding that Appellants had used corporal punishment in the form of spanking, slapping hands, and "pop on mouth," in violation of Department child foster care licensing rules. The Order required immediate correction and offered Appellants and opportunity to respond by indicating how the violation was corrected. On September 27, 2014, Appellant Knott-Johnson responded on the Order form that Appellants had not used corporal punishment on any foster child in their care. Appellants also requested reconsideration of the Correction Order. By letter to Appellants dated October 28, 2014, the Department acknowledged receipt of the request and advised Appellants that the request had been referred to Olmsted County for its response. By letter dated November 3, 2014, Olmsted County provided its written response to the Department. By letter to Appellants dated December 5, 2014, the Department affirmed the Correction Order, finding that there was a preponderance of the evidence that Appellants had used corporal punishment to discipline a foster child in their care.¹⁹

19. By letter dated October 7, 2014, to Jodi Wentland, Olmsted County, counsel for Appellants requested reconsideration of the September 9th maltreatment and disqualification determination.²⁰

20. By letter from Ms. Wentland to Appellants dated October 14, 2014, Olmsted County affirmed the maltreatment and disqualification determination. Ms. Freiderich provided formal notice of the affirmance to the Department.²¹

21. By letter to the Department dated October 23, 2014, Ms. Freiderich recommended that the Appellants' child foster care license be revoked, and by separate letter of the same date, advised Appellants of the recommendation.²²

22. On December 22, 2015, the Department issued an Order of Revocation, revoking Appellants' child foster care license. The Order states in part:

Due to the serious and chronic nature of the violations; because Mr. Johnson physically abused a foster child; because Mr. Johnson

¹⁷ Ex. 2.

¹⁸ Test. of M. Freiderich; Ex. 1 at 13.

¹⁹ Exs. 7-11.

²⁰ Ex. 3.

²¹ Exs. 4, 5.

²² Exs. 12, 13.

subjected a foster child to corporal punishment; because Mr. Johnson was found responsible for maltreatment of a child; because Mr. Johnson was disqualified from any position allowing direct contact with, or access to, persons served by DHS licensed programs; and, in order to protect the health, safety and rights of children receiving services in DHS licensed programs, your license to provide child foster care is revoked.

The Order noted that Appellant William Johnson had requested a fair hearing regarding Olmsted County's affirmance of the determination of maltreatment and disqualification.²³

23. By letter dated January 15, 2016, Appellants' counsel appealed the Order of Revocation.²⁴

24. At the direction of the Office of the Dodge County Attorney, Officer Erdman, on September 30, 2014, tab-charged Appellant William Johnson with misdemeanor domestic assault on the basis of the allegations of the child care provider that Appellant Johnson had given T.H. a bloody nose. With the agreement of the West Concord prosecutor, at a pretrial court appearance on September 24, 2015, the charge was continued six months for dismissal without a plea or admission of guilt, subject to successful compliance by Appellant Johnson with the following conditions: commit no same or similar offenses; remain law abiding; complete a domestic abuse evaluation; and follow all recommendations of the evaluation.²⁵

25. Appellant William Johnson completed a domestic abuse evaluation conducted by Francis Tougas, MS, LP, Pinnacle Behavioral Healthcare, LLC. The evaluator did not find Appellant Johnson to be in need of a domestic abuse or anger management course.²⁶

26. At the conclusion of the six-month period of continuance without a plea, the charge against Appellant Johnson was dismissed.²⁷

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Commissioner have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 245A.08 (2016).

2. The Department has complied with all substantive and procedural requirements of law and rule.

²³ Ex. 14.

²⁴ Ex. 15.

²⁵ Exs. 17-19; Test. of W. Johnson.

²⁶ Ex. 20.

²⁷ Test. of W. Johnson.

3. At a consolidated hearing pursuant to an appeal from a determination of maltreatment order, the Department has the burden to prove, by a preponderance of the evidence that an act that meets the definition of maltreatment occurred.²⁸

4. At a hearing pursuant to an appeal of an order of license revocation, the Department may demonstrate reasonable cause for the action taken by submitting statements, reports, or affidavits to substantiate the allegations that the license holder failed to comply fully with applicable law or rule. If the Department demonstrates that reasonable cause existed, the burden of proof shifts to the license holder to demonstrate, by a preponderance of the evidence, that the license holder was in full compliance with those laws and rules at the relevant times.²⁹

5. Minn. Stat. § 245A.07 (2016) states in part:

Subdivision 1. Sanctions; appeals; license. (a) In addition to making a license conditional under section 245A.06, the commissioner may suspend or revoke the license, impose a fine, or secure an injunction against the continuing operation of the program of a license holder who does not comply with applicable law or rule. When applying sanctions authorized under this section, 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.

. . .

Subd. 3. License suspension, revocation, or fine. (a) The commissioner may suspend or revoke a license, or impose a fine if:

- (1) a license holder fails to comply fully with applicable laws or rules;
- (2) a license holder . . . has a disqualification that has not been set aside

6. Minn. Stat. § 245.04, subd. 6 (2016), states:

Commissioner's evaluation. Before issuing, denying, suspending, revoking, or making conditional a license the commissioner shall evaluate information gathered under this section. The commissioner's evaluation shall consider facts, conditions, or circumstances concerning the program's operation, the well-being of persons served by the program, available consumer evaluations of the program, and information about the qualifications of the personnel employed by the applicant or license holder.

²⁸ Minn. Stat. §§ 245A.07, subd. 3(b); .08, subd. 3(a); 245C.28 (2016); Minn. R. 1400.8608 (2015).

²⁹ Minn. Stat. § 245A.08, subd. 3(a).

7. Appellants operate a “facility,” as that term is defined in Minn. Stat. § 626.556, subd. 2(c)(1) (2016).

8. T.H. was a “minor,” as that term is defined in Minn. Stat. § 645.45(14) (2016), and a “child,” as that term is defined in Minn. Stat. §§ 245A.02, subd. 4; 245C.02, subd. 6 (2016).

9. Minn. Stat. § 626.556, subd. 2(k) (2016), defines the term, “physical abuse,” in relevant part, as “any physical injury . . . inflicted by a person responsible for the child’s care on a child other than by accidental means”

10. Appellant William Johnson was a “person responsible for the . . . care” of T.H. as that term is defined in Minn. Stat. § 626.556, subd. 2(j)(1) (2016).

11. Department child foster care rules prescribe that foster children must not be subjected to corporal punishment in any form.³⁰

12. Appellants held a child foster care “license,” as that term is defined in Minn. Stat. § 245C.02, subd. 8 (2016), issued by the Department, and Appellant William Johnson was a “license holder,” as that term is defined in Minn. Stat. § 245C.02, subd. 9 (2016).

13. Minn. Stat. § 245C.03, subd. 1(a)(1) (2016), provides that the Commissioner is required to conduct a background study on an applicant for a license. Appellant William Johnson was a “subject of a background study,” as that term is defined in Minn. Stat. § 245C.02, subd. 19 (2016).

14. Appellant William Johnson was subject to the child abuse reporting, investigation, and determination of maltreatment provisions of Minn. Stat. § 626.556 (2016).

15. Minn. Stat. § 245C.02, subd. 18(a), (c) (2016), defines the term, “serious maltreatment,” in pertinent part, as “abuse resulting in serious injury,” which is, in turn, defined, in pertinent part, to include “bruises,” “skin lacerations,” or “tissue damage.”

16. The Commissioner must disqualify an individual who is the subject of a background study from direct contact with persons receiving services upon receiving information that a preponderance of the evidence indicates that the individual has committed serious maltreatment of a child, as defined in Minn. Stat. § 245C.02, subd. 18(a), (c) (2016).³¹

17. The Department failed to demonstrate, by a preponderance of the evidence, that Appellant William Johnson physically abused T.H. or subjected T.H. to corporal punishment.

³⁰ Minn. R. 2960.3080, subp. 8(A)(1) (2015).

³¹ Minn. Stat. §§ 245C.14, subd. 1(a)(3); .15, subd. 4(b)(2) (2016).

18. The Department failed to demonstrate, by a preponderance of the evidence, that Appellant William Johnson engaged in serious maltreatment of a minor.

19. The Department improperly disqualified Appellant William Johnson for serious maltreatment from direct contact with persons receiving services.

20. The Department failed to demonstrate reasonable cause for the revocation of Appellants' child foster care license.

Based upon these Conclusions of Law, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the Commissioner rescind the order permanently disqualifying Appellant William Johnson from direct contact with persons receiving services, and rescind the order revoking Appellants' child foster care license.

Dated: August 22, 2016



STEPHEN D. SWANSON
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 (2016), 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 64254, St. Paul, MN 55164-0254, (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 (2016). 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 (2016), 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

I. Introduction

Resolution of this case comes down to a question of the burden of proof, and more precisely, whether the Department met its burden to prove, by a preponderance of the evidence, that Appellant William Johnson physically abused or subjected to corporal punishment his foster daughter, T.H. The alleged physical abuse is the sole basis cited by the Department for the determination of serious maltreatment and disqualification of Appellant Johnson, and the revocation of Appellants' child foster care license. If the Department met its burden, the disqualification and revocation orders were properly issued. If the Department did not meet its burden, the orders were improper. For the reasons that follow, the Administrative Law Judge concludes that the Department failed to prove, by a preponderance of the evidence, that Appellant William Johnson physically abused T.H. or subjected her to corporal punishment.

Because portions of the contested case record relate to the identity of the alleged victim of child physical abuse and the identity of a mandated reporter of suspected child abuse, the Administrative Law Judge, pursuant to Minn. Stat. § 14.60, subd. 2, and with the agreement of the parties, closed the hearing and placed the exhibits and the hearing record under seal. Because this report does not contain significant private information or identify the alleged child abuse victim or mandated reporter, and because the

Commissioner may incorporate all or part of the report by reference in her final disposition, the report is not placed under seal.³²

II. Analysis

The principle issue in this case is whether Appellant William Johnson physically abused foster child T.H. by inflicting corporal punishment or rough treatment resulting in a bloody nose. The other alleged incidents of the use of corporal punishment by Appellant Johnson do not rise to the level of maltreatment, and while, if substantiated, would support a correction order, they would not support the disqualification of Appellant Johnson or the revocation of Appellants' child foster care license.

To prove the alleged maltreatment, the Department relied at the hearing on the initial report of the Appellants' child care provider and two subsequent interviews with her, and statements made by Appellant Johnson to Department investigators and a police officer. Neither the alleged victim³³ nor the child care provider were called as witnesses at the hearing.³⁴ For the following reasons, the Administrative Law Judge concludes that the Department failed to meet its burden to prove, by a preponderance of the evidence, that Appellant Johnson committed maltreatment or used corporal punishment to discipline T.H.

The only evidence to substantiate the allegation that Appellant Johnson intentionally physically abused T.H. sometime in March 2014 is based on his own disclosure in March or April 2014 to Appellants' child care provider, a mandated reporter. The child care provider, in her initial report, and in subsequent interviews with Department and police investigators, alleges that Appellant Johnson, in a friendly conversation at the child care provider's home, volunteered to the child care provider that he gave T.H. a bloody nose when he struck her to discipline her. There are no

³² The final disposition of the Commissioner will be classified as public data under the Minnesota Government Data Practices Act. Minn. Stat. § 13.46, subd. 4(b)(1)(ii) (2016).

³³ The alleged victim, T.H., was born on November 2, 2011, and while she might have been competent to testify at the hearing, would not likely be able to recall some blood on her nose from an incident in 2014.

³⁴ In her closing statement, counsel for the Department stated that she was precluded from calling the mandated reporter as a witness by virtue of the pretrial Protective Order entered in this case. The Administrative Law Judge does not agree. Paragraph 6 of the Protective Order dated February 16, 2016, states as follows:

This protective order does not authorize the disclosure of the identity of the reporter of alleged maltreatment, the reporter of complaints, and the reporter of alleged violations of licensing laws. Such data is confidential pursuant to Minn. Stat. §§ 626.556, subd. 11(a), 626.557, subd. 12b(c), and 13.46, subd. 4(d).

While the identity of a mandated reporter is classified as confidential data under Minn. Stat. §§ 13.46, subd. 4(d), and 626.556, subd. 11(a) (2016), and may not be disclosed to the public, the information known to the reporter is not. If a mandated reporter has information that is relevant in a contested case hearing, the mandated reporter can, under appropriate order of the administrative law judge protecting the reporter's identity, be made to appear and testify at a closed hearing. Under the authority granted in Minn. Stat. § 14.60, subd. 2, the reporter's testimony can be sealed and disclosure of the reporter's identity to the public by any party proscribed. See *a/so* Minn. Stat. § 13.46, subd. 4(e) (2016).

photographs substantiating the alleged maltreatment. T.H., during her brief interview by a Department investigator, could not remember having a bloody nose.³⁵

The report of the child care provider is suspect for three reasons. First, it strains credulity to believe that Appellant Johnson would volunteer such a startling and potentially damaging admission. He was a licensed foster care provider and was aware of the rules prohibiting the use of corporal punishment. Further, Appellants were under heightened scrutiny as prospective adoptive parents of T.H. and her sister.

Second, as a mandated reporter, the child care provider had an obligation to promptly report suspected child abuse. She waited in excess of four months to report the alleged incident.

Third, the child care provider's explanation to Department investigators that she was prompted to finally report the incident as a result of her observation of further instances of Appellant Johnson's use of corporal punishment to discipline T.H. rings hollow. It rings hollow because the report followed, within a few days, a dispute with Appellants regarding the amount of money they should be paying the child care provider for her services, coupled with Appellants' communication to the provider of their decision to remove their four children from her care rather than pay the additional amount requested. The temporal relationship between the report and the child care payment dispute suggests a possible motivation for retaliation.

Appellant has consistently admitted, both to Department and police investigators, and at the hearing, that on one occasion sometime in March 2014, while caring for T.H. in Appellants' home, he accidentally injured her and caused some bleeding from her nose. He has consistently maintained that the injury was caused accidentally and not as a result of the intentional use of corporal punishment or rough treatment. The accidental infliction of a minor injury does not constitute physical abuse, as that term is defined in the Reporting of Maltreatment of Minors Act.³⁶

For these reasons, the Administrative Law Judge concludes that the Department has failed to prove, by a preponderance of the evidence, that Appellant Johnson is responsible for the maltreatment by physical abuse of foster child T.H.

³⁵ Ex. 1 at 5.

³⁶ Minn. Stat. § 626.556, subd. 2(k).

Furthermore, because the child care provider's report is suspect, it is insufficient to substantiate the allegations that Appellant Johnson used corporal punishment to discipline T.H.³⁷ The Department has failed to prove, by a preponderance of the evidence, that Appellant used corporal punishment to discipline T.H. in violation of Department child foster care rules.³⁸

In conclusion, the Administrative Law Judge recommends that the Commissioner rescind the order permanently disqualifying Appellant William Johnson from direct contact with persons receiving services, and rescind the order revoking Appellants' child foster care license.

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³⁷ There is some corroborating evidence of Appellant Johnson's use of corporal punishment in the record. In a telephone interview conducted by West Concord Police Officer Michael Erdman on January 27, 2015, Aaron Sletten, the brother-in-law of the child care provider, reported that on one occasion, while at the child care provider's home during a social gathering with Appellants, he observed Appellant Johnson become very angry with T.H., "kind of grabbing her and I wouldn't call it very forcefully but somewhat aggressively," "kind of smacked her in the back of the head and set her down for a timeout," and sat next to her on the couch. Mr. Sletten was asked by the child care provider if he could recall any incidents involving Appellant Johnson, and told by her that he might be contacted by Officer Erdman. Ex. 113. Mr. Sletten was not called as a witness by either party. Given the clear potential for bias, Mr. Sletten's statement, standing alone or in combination with the child care provider's report, lacks sufficient specificity to support a finding of fact that Appellant Johnson used corporal punishment to discipline T.H.

³⁸ See Minn. R. 2960.3080, subp. 8(A)(1).