

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

In the Matter of the Denial of the Child  
Foster Care License Application of  
Keisha Rochelle Burrus

**RECOMMENDED ORDER ON THE  
DEPARTMENT AND THE COUNTY'S  
MOTION FOR SUMMARY DISPOSITION**

This matter is pending before Administrative Law Judge James E. LaFave pursuant to a Notice and Order for Prehearing Conference and Hearing filed on June 17, 2016.

Jada N. Lewis, Assistant Ramsey County Attorney, represents the Minnesota Department of Human Services (Department) and the Ramsey County Community Human Services Department (County). Keisha Rochelle Burrus represents herself without counsel.

On July 1, 2016, the Department and the County filed a Motion for Summary Disposition. Ms. Burrus was given until the close of business on July 20, 2016, to serve and file a response to the motion.<sup>1</sup> Ms. Burrus did not file a response. The record on the Motion for Summary Disposition closed on July 20, 2016, at the end of Ms. Burrus's time to respond.

Based upon all of the files, records, and proceedings herein, and for the reasons set out in the attached Memorandum,

**IT IS HEREBY RECOMMENDED THAT:**

1. The Commissioner of the Department of Human Services (Commissioner) **GRANT** the Department and the County's Motion for Summary Disposition.
2. The Commissioner **AFFIRM** the denial of Keisha Rochelle Burrus's application for a child foster care license.

Dated: August 18, 2016

  
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JAMES E. LAFAVE  
Administrative Law Judge

<sup>1</sup> See SECOND PREHEARING ORDER (July 6, 2016).

## NOTICE

This Order 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, Commissioner of Human Services, PO Box 64998, St. Paul MN 55155, (651) 431-2907 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).

Under Minn. Stat. § 14.62, subd. 1 (2016), the Commissioner is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

## MEMORANDUM

### Overview

On May 11, 2016, the Department denied Ms. Burrus's application to provide child foster care.<sup>2</sup> Ms. Burrus appealed that denial.<sup>3</sup> On July 1, 2016, the Department and the County moved for summary disposition, claiming there are no material facts in dispute and that it is entitled to judgment in its favor as a matter of law.<sup>4</sup>

### Summary Disposition Standard

Summary disposition is the administrative law equivalent of summary judgment.<sup>5</sup> The Office of Administrative Hearings has generally followed the summary judgment standards developed in judicial courts in considering motions for summary disposition regarding contested case matters.<sup>6</sup> Summary disposition of a claim is appropriate when there is no genuine issue of material fact and one party is entitled to a favorable decision as a matter of law.<sup>7</sup> To obtain summary disposition, the moving party must establish that there is no genuine issue of material fact.<sup>8</sup> A material fact is one that is

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<sup>2</sup> NOTICE AND ORDER FOR PREHEARING CONFERENCE AND HEARING at Ex. B (June 7, 2016).

<sup>3</sup> *Id.* at Ex. A.

<sup>4</sup> MINNESOTA DEPARTMENT OF HUMAN SERVICES AND RAMSEY COUNTY COMMUNITY HUMAN SERVICES' NOTICE OF MOTION AND MOTION FOR SUMMARY DISPOSITION (July 1, 2016).

<sup>5</sup> Minn. R. 1400.5500(K) (2015).

<sup>6</sup> Minn. R. 1400.6600 (2015).

<sup>7</sup> Minn. R. Civ. P. 56.03.

<sup>8</sup> *Thiele v. Stich*, 425 N.W.2d 580, 585 (Minn. 1988).

substantial and will affect the result or outcome of the proceeding, depending upon the determination of that fact.<sup>9</sup> If the moving party successfully demonstrates there are no issues of material fact, then the non-moving party must prove there are facts in dispute that could affect the outcome of the case.<sup>10</sup> Disputed facts must be shown with “substantial evidence,” rather than only denying the moving party’s statements.<sup>11</sup> Finally, when considering a motion for summary disposition, an administrative law judge must view the evidence in the light most favorable to the non-moving party.<sup>12</sup>

## Facts

On April 9, 2015, Ms. Burrus applied for a child foster care license with the County.<sup>13</sup> As part of the licensing process, the County conducted a background study on Ms. Burrus.<sup>14</sup> Records from the Bureau of Criminal Apprehension and the Ramsey County District Court showed that Ms. Burrus was convicted of felony theft on February 9, 2009.<sup>15</sup> On March 4, 2011, Ms. Burrus was discharged from probation and the conviction was reduced to a misdemeanor.<sup>16</sup>

On December 8, 2015, because of her theft conviction, the Department disqualified Ms. Burrus from any position allowing direct contact with, or access to, persons receiving services from a licensed child foster care program.<sup>17</sup> The Department informed Ms. Burrus she had 30 days to request reconsideration of her disqualification and that if she failed to request reconsideration within 30 days, she would be treated as having accepted the disqualification.<sup>18</sup> Ms. Burrus did not request a reconsideration of her disqualification.<sup>19</sup>

On May 11, 2016, the Department denied Ms. Burrus’s application to provide child foster care.<sup>20</sup> The denial was based on Ms. Burrus’s disqualification which, because she did not request reconsideration, was considered conclusive.<sup>21</sup>

Ms. Burrus appealed the denial of her application claiming the denial was “based off of inaccurate information on a criminal history report.”<sup>22</sup>

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<sup>9</sup> *Highland Chateau v. Minnesota Department of Public Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984).

<sup>10</sup> *Thiele v. Stich*, 425 N.W.2d at 583.

<sup>11</sup> Minn. R. Civ. P. 56.05.

<sup>12</sup> *Dollander v. Rochester State Hospital*, 362 N.W.2d 386, 389 (Minn. Ct. App. 1985).

<sup>13</sup> Affidavit (Aff.) of Jada N. Lewis at Ex. 4 (July 1, 2016).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at Ex. 2, 3.

<sup>16</sup> *Id.* at Ex. 3.

<sup>17</sup> *Id.* at Ex. 1.

<sup>18</sup> *Id.*

<sup>19</sup> See *id.* at Ex. 5.

<sup>20</sup> Department (Dept.) Ex. 6.

<sup>21</sup> *Id.*

<sup>22</sup> Dept. Ex. 7.

## The Applicable Law

Applicants for child foster care licenses and other Department-licensed programs are required by Minnesota law to undergo a background study as part of the application process.<sup>23</sup> If the Department determines that the individual committed one of the crimes listed in Minn. Stat. § 245C.15 (2016), the individual is disqualified from any position allowing direct contact with or access to persons receiving services from the program.<sup>24</sup> This means that a disqualified individual cannot hold a child foster care license or live with someone who holds a license.<sup>25</sup> Theft is a listed crime.<sup>26</sup> The length of the disqualification period varies depending on the crime, and disqualification for theft as it applies to Ms. Burrus, is seven years.<sup>27</sup> A disqualified person may request reconsideration of the Department's disqualification determination.<sup>28</sup> If a disqualified individual does not request reconsideration, the disqualification is conclusive and no further right to administrative review exists.<sup>29</sup>

## Analysis

The Department and the County argue they are entitled to summary disposition as a matter of law because Ms. Burrus's disqualification is conclusive and that she remains disqualified until March 4, 2018.

The order of denial is based solely on Ms. Burrus's disqualification and her failure to request reconsideration of that disqualification. A "disqualification shall be considered conclusive for purposes of the licensing action if a request for reconsideration was not submitted within 30 calendar days of the individual's receipt of the notice of disqualification."<sup>30</sup> The record shows that Ms. Burrus did not request reconsideration of her disqualification in a timely manner and the disqualification is therefore conclusive and no longer subject to appeal. Ms. Burrus does not explain why she did not request reconsideration of her disqualification, but instead states that her denial was "based off of inaccurate information on a criminal history report."<sup>31</sup> Ms. Burrus also fails explain what "inaccurate information" was contained in the police report.

It is undisputed that Ms. Burrus was disqualified from any position allowing direct contact with, or access to, persons receiving services from a licensed child foster care program. It is also undisputed that Ms. Burrus failed to request reconsideration of the disqualification and that, as a matter of law, the disqualification is conclusive. As Ms. Burrus is now legally prohibited from challenging the disqualification in this

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<sup>23</sup> Minn. Stat. § 245C.03 subd. 1 (2016).

<sup>24</sup> Minn. Stat. §§ 245C.14-.15 (2016).

<sup>25</sup> *Id.*; Minn. R. 2960.3020 (2015).

<sup>26</sup> Minn. Stat. § 245C.15, subd. 2.

<sup>27</sup> Minn. Stat. § 245C.15, subd. 4; See Aff. of Lewis at Ex. 1.

<sup>28</sup> Minn. Stat. § 245C.21 (2016).

<sup>29</sup> Minn. Stat. §§ 245C.29 subd. 2(b); .27, subd. 1(a) (2016).

<sup>30</sup> Minn. Stat. § 245C.29 subd. 2(b).

<sup>31</sup> Dept. Ex. 7.

proceeding,<sup>32</sup> there is no genuine issue of material fact that would preclude resolution of this case through summary disposition.

Accordingly, the Administrative Law Judge must recommend that the Commissioner GRANT the Department and the County's Motion for Summary Disposition and AFFIRM the Department's denial of Ms. Burrus's child foster care license application.

**J. E. L.**

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<sup>32</sup> Minn. Stat. §§ 245C.29, subd 2(b); .27, subd. 1(a).