OAH 82-1800-37555

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Appeal by Tara Lussier of the Order of License Denial License No.1104815 (Child Foster Care) (In Application)	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION UPON DEFAULT**

This matter came before Administrative Law Judge Barbara J. Case for a prehearing conference on July 12, 2020.

David Hanson, Assistant Attorney General, appeared on behalf of the Department of Human Services (Department). There was no appearance by, or on behalf of, Tara Lussier (Appellant). The record in this matter closed on July 23, 2021, which was the deadline set in the Order to Show Cause issued to Appellant on July 12, 2021.

STATEMENT OF THE ISSUES

1. Did the Department correctly determine that Appellant committed the licensing violations as set forth in detail in the Order of License Denial, under the applicable law cited for each violation?

2. Did the Department correctly determine that Appellant knowingly withheld relevant information from, or gave false or misleading information to, the Commissioner in connection with her application for a license, under Minn. Stat. § 245A.05(a)(3) (2020)?

3. Did the Department properly deny Appellant's application to provide child foster care under Minn. Stat. § 245A.05(a) (2020)?

SUMMARY OF RECOMMENDATION

The Administrative Law Judge concludes that Appellant is in default and recommends that the allegations in the Notice and Order for Prehearing Conference and Hearing (Notice and Order for Hearing) be accepted as true and deemed proven.

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

FINDINGS OF FACT

1. On June 8, 2021, the Notice and Order for Hearing in this matter was mailed to Respondent at her last known address.[1]

2. The Notice and Order for Hearing indicated that a prehearing conference would be held on June 8, 2021, at 10:00 a.m. by telephone.[2]

3. In conformity with Minn. R. 1400.8560 (2021), the Notice and Order for Hearing also included the following statement:

> The Appellant's failure to appear at the hearing or any prehearing conference, may result in a finding that the Appellant is in default, that the Department of Human Services' allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld. [3]

4. No one appeared at the July 12, 2021, Prehearing Conference on Appellant's behalf. No request was made for a continuance, nor was any communication received by the undersigned from Appellant prior to the July 12, 2021, Prehearing Conference.

5. Appellant's failure to appear at the prehearing conference was without consent of the Administrative Law Judge.

6. Because Appellant failed to appear at the prehearing conference, Appellant was in default. However, on July 12, 2021, the undersigned issued an Order to Show Cause giving Appellant an opportunity to explain her failure to appear at the prehearing conference and avoid defaulting.[4] The Order to Show Cause was not returned to the Office of Administrative Hearings as undeliverable nor has Appellant contacted the Office of Administrative Hearings.

7. Pursuant to Minn. R. 1400.8560, the allegations contained in the Notice and Order for Hearing, appended hereto, are taken as true, deemed proven without further evidence, and incorporated by reference into these Findings of Fact.

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

CONCLUSIONS OF LAW

1. The Department and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 245A.05 (2020).

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[1] Affidavit of Service (June 8, 2021) (attached to Notice and Order for Hearing (May 18, 2021)).
[2] Notice and Order for Hearing.
[3] *Id.* at 3.
[4] Order to Show Cause (July 12, 2021).

2. Appellant received timely and proper notice of the Prehearing Conference in this matter when the Department sent the Notice and Order for Hearing to her last known address.

3. The Department has complied with all relevant procedural requirements of statute and rule.

4. Under Minn. R. 1400.8560, Appellant is in default as a result of her failure to appear at the scheduled prehearing conference.

5. Under Minn. R. 1400.8560, when a party defaults by failing to appear at a prehearing conference without the prior consent of the judge, the allegations and the issues set out in the Notice and Order for Prehearing Conference and Hearing may be taken as true and deemed proved. The Administrative Law Judge therefore deems the allegations to be true.

6. The Department may deny a license if an applicant or controlling individual fails to submit a substantially complete application, fails to comply with applicable laws or rules, knowingly withholds relevant information from or gives false or misleading information to the commissioner in connection with an application for a license during an investigation, among other reasons.[5]

7. The Department has grounds to deny Appellant's application for a foster care license based on the allegations set forth in the Notice and Order for Hearing.

Based on the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

RECOMMENDATION

It is respectfully recommended that the Commissioner of Human Services (Commissioner) affirm the denial of Appellant's license based on the circumstances described in the Notice and Order for Hearing.

Dated: September 15, 2021

Barbara J. Case
Administrative Law Judge

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of the Department of Human Services (Commissioner) will make the final decision after a review of the record. Under Minn. Stat. § 14.61 (2020), the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten calendar

[5] Minn. Stat. § 245A.05 (2020).

days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Administrative Law Office staff at DHS_AdminLaw@state.mn.us 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 (2020). 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 to be imposed.

Under Minn. Stat. § 14.62, subd. 1 (2020), the Commissioner is required to serve a final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.