OAH 80-1801-38627

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Appeal by Rhonda Jones and Clayton Rainey Jr. of the Order of Temporary Immediate Suspension	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION**
License No. 1106995 (CFC)	

A hearing in this matter was held before Administrative Law Judge LauraSue Schlatter on November 16, and 30, 2022. The November 16, 2022, portion of the hearing was held at the Office of Administrative Hearings, St. Paul, Minnesota, with certain witnesses appearing remotely, via Microsoft Teams. The hearing concluded on November 30, 2022, and was conducted remotely, via Microsoft Teams. The record closed that day at the conclusion of the hearing.

R.J. Detrick, Assistant Attorney General, appeared on behalf of the Minnesota Department of Human Services (Department). Peter J. Nickitas, Band Member Legal Services, Mille Lacs Band of Ojibwe Indians, appeared on behalf of Rhonda Jones and Clayton Rainey, Jr. (Licensees).

STATEMENT OF THE ISSUE

Is there reasonable cause to believe that there is an imminent risk of harm to the health, safety, or rights of children in the Licensees' care, sufficient to require the temporary immediate suspension (TIS) of Licensees' child foster care license to remain in effect pending completion of the Department's investigation and the issuance of a final order by the Commissioner of the Department of Human Services (Commissioner) regarding a licensing sanction?[1]

SUMMARY OF RECOMMENDATION

The Administrative Law Judge concludes the Department has demonstrated that there is reasonable cause to believe there is an imminent risk of harm to the health, safety, or rights of the children in the Licensees' care, sufficient to require the TIS of the child foster care license to remain in effect while the Department completes its investigation.

[1] Minn. Stat. § 245A.07, subds. 2a, 3 (2022). Ms. Jones and Mr. Rainey are now married, and Ms. Jones' legal name is Rainey. She prefers to use the name Jones and the license is in her former name. She will be referred to as Ms. Jones in this report.

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

FINDINGS OF FACT

I. Background

1. Licensees are licensed to provide child foster care by the American Indian Family and Children's Services (AIFACS) in their home in Isanti, Minnesota.[2] They have been licensed to provide foster care at that location by AIFACS since March 2021.[3]

2. Ms. Jones was previously a licensed child foster care provider. She was licensed through the Fond du Lac band from about 2004 until 2014. She was living on the Fond du Lac Reservation. She adopted two foster children in approximately 2007 and did not provide foster care for additional children after that time. She left the Fond du Lac Reservation and moved to the Twin Cities in 2014 after discovering that her former husband had drug problems he was not able to overcome. Ms. Jones did not seek a new foster care license after moving.[4]

3. Ms. Jones has lived in Isanti in her current home since January 2020.[5] The home has five bedrooms on two levels.[6] The basement has two bedrooms, a living room, a bathroom, and a storage area under the stairs.[7]

4. In 2020, Ms. Jones decided to apply for a new foster care license. She was married to Clayton Rainey and was living in Isanti and wanted to care for young children. She left the job she had with Woodlands Bank on Franklin Avenue in Minneapolis, a Mille Lacs Band bank, to become a foster parent again. She applied for a license with AIFACS and the Department.[8]

5. After applying, Licensees were directed to attend a couple of workshops to listen to, and a Zoom meeting with Angela DeWitt, the licensor, over the phone. Licensee said that she had been a licensed foster care provider in the past and does not recall receiving other materials or instruction from AIFACS or the Department. She was primarily asked questions about herself, her husband, and who lived in the house.[9] Sabrina Batalden replaced Ms. DeWitt as their AIFACS licensor in July 2022.[10]

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[2] Testimony (Test.) of Sabrina Batalden.
[3] *Id.* Ex. 9 (Child Foster Care Application) (Oct. 14, 2020).
[4] Test. of Rhonda Jones.
[5] Ex. 9 at DHS90, 91. Ms. Jones testified that she had lived in the Isanti home for approximately five years.
[6] Test. of Cheyanne Diver.
[7] Test. of R. Jones.
[8] *Id.*
[9] *Id.*
[10] Test. of S. Batalden.

6. Ms. Jones recalls the Licensor discussing with Licensees appropriate discipline, activities, the kind of home life Licensees would offer, and the basic requirements of shelter, food, and clothing.[11]

7. The Licensor told Ms. Jones that she was a mandated reporter, which Ms. Jones understood to mean that she was required to report anything that happened to the foster children.[12]

II. Licensees' Family

8. Ms. Jones left her first husband because she "does not believe in drugs" and was not willing to raise their children in a home where their father was unable to conquer his addiction.[13]

9. She has always loved and nurtured her foster children and has not distinguished between them and her biological children. She involves all of the children in her activities. It is rare to see her out without at least one of her children with her.[14]

10. When her children were growing up, Ms. Jones was positive and joyful, always very caring and involved with them.[15]

11. After getting the foster care license in 2021, Ms. Jones and Mr. Rainey waited to have younger children placed with them because they believed they could do the "most good" with younger children, and that placements for younger children were needed most.[16]

12. Mr. Rainey works in a supervisory position as an armed guard for Garda World. In that capacity, he transports money for the federal government, automated teller machines, and banks. He has worked for Garda World for approximately five years, and has been in the security industry for more than 30 years. Some of his work has included security at the casino, working as a corrections officer, and in law enforcement. His work has always required him to have a security clearance.[17]

13. Mr. Rainey also has to carry a firearm for work. He keeps his firearms in a locked cabinet in the house in Isanti.[18] Mr. Rainey works in Minneapolis. He often leaves as early as 5:30 a.m. for work and sometimes works six days a week.[19]

14. Mr. Rainey has five children of his own, but they do not live in Minnesota. He has not been a foster care provider before. He is an enrolled member of the Leech

[11] Test. of S. Jones.
[12] *Id.*
[13] Test. of R. Jones and Diana Sutter.
[14] Test. of Rebecca Alstrand.
[15] Test. of D. Sutter.
[16] Test. of R. Jones.
[17] Test. of Clayton Rainey, Jr.
[18] *Id.*
[19] *Id.*

Lake band of Chippewa and wanted to become a foster care provider to native children because he loves children, and he values native traditions very highly. He is a champion dancer and competes in competitions and powwows all over the country.[20] He has participated in six competitions in the past year. Ms. Jones and the foster children accompany him whenever they can.[21]

15. Mr. Rainey sees the job of a foster parent as protecting and serving the children. He believes children need love, respect, honor, discipline, and to be kept safe.[22]

16. On March 13, 2021, siblings KRF, who was 5 years old and IRF, who was 7 years old, were placed in Licensees' foster home.[23] On the same day, Clayton Rainey's mother, Carol Rainey, moved into the house. Mrs. Rainey was terminally ill, and the family cared for her during her final illness. Mr. Rainey was very close to his mother, and it was extremely important to him to be able to provide a home and care to her at that time.[24]

17. GS was placed with Licensees on December 29, 2021, at the age of approximately two weeks.[25]

18. Ms. Jones has five sons: the youngest is Noah (17). Her other sons are Kai (20), Josh (24), Torrey (28), and Donald (34). She also has three daughters – Lanaya (15), Delaney (17), and Cheyanne (19). She became guardian for her daughters when they were young. Lanaya, who is her great niece, has been in her care since she was an infant. Delaney and Cheyanne were originally foster children.[26]

19. When the first two foster children (KRF and IRF) were placed with Licensees, Noah, Delaney, Lanaya, and Cheyanne were living in the house. All of them were minors at the time. Ms. Jones' other children were not living with Ms. Jones and Mr. Rainey. [27]

20. Licensee's children enjoyed the foster children, helped with the care of the baby, and played with the older children.[28]

21. Lanaya was not listed as a person living in the home on the Licensees' 2020 foster care license application.[29]

22. Cheyanne was not listed as a person living in the home on the Licensees' 2022 foster care license renewal application.[30] While Licensees listed Noah as living in

[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] Test. of Sabrina Batalden. Ex. 4.
[24] Test. of R. Jones and C. Rainey.
[25] Test. of Sabrina Batalden. Ex. 4.
[26] Test. of R. Jones.
[27] Test. of R. Jones.
[28] *Id.*
[29] Ex. 9 at DHS 92.
[30] Ex. 10 at DHS 108-109.

the home on the 2022 renewal application, they answered "No" to the question "Do minor children have any health conditions for which they need medical care?" Because they answered "No" to that question, they did not respond to the follow-up question, which included "describe . . . whether or not the condition may pose a risk to foster children . . .."[31]

23. Noah was in treatment at Wings in Litchfield from November 2021 through March 2022, when GS, the youngest foster child, was placed in the home in December 2021.[32]

24. On June 7, 2022, Noah entered another treatment program called Teen Challenge/Lakeside, located in Buffalo, Minnesota.[33] Participation in the Teen Challenge treatment program was a condition of Noah's probation. At the time, alcohol and THC were showing up in his urine tests. [34]

25. Kai Petite, Ms. Jones' 20-year-old son, has primarily lived with his father since his mother left Fond du Lac in 2014. But Kai was staying with his mother on May 31, 2021, Kai's nineteenth birthday. He decided at that time to move back with his father in Fond du Lac.[35] Since moving back to his father's, he has visited his mother's home occasionally, but not very often. He does not have transportation to Isanti, and he does not have a key to the Isanti house. He was not at the Isanti house at all from August 12 through August 15, 2022.[36] The last time he could recall being at the Isanti house was on his birthday at the end of May 2022.[37]

26. Kai has listed his mother's house as his home address because his mother has provided him with love and care, but his father never has. Even though he has lived with his father most of his life, he has always thought of his mother's house as home.[38]

27. Kai has spent time with the foster children since they were placed with Licensees. He was with them and the Licensees at the Grand Portage powwow over the August 12 through 14, 2022, weekend.[39]

28. Josh Petite is Ms. Jones' 24-year-old son. In August 2022, Josh was mostly homeless, although he would sometimes stay with his father at Fond du Lac. It is unclear when Josh last lived with his mother – it may have been as recently as 2019.[40] Josh has never lived with his mother at her house in Isanti. But he did stay with her at the Isanti house "for a couple of weeks" after he was arrested in September 2020, for a DUI in Anoka county and had to remain within 20 miles of the jail for a period of time to be tested.

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[31] Ex. 10 at DHS 103 and 105.
[32] *Id.* Test. of Noah Petite.
[33] *Id.*
[34] Test. of Noah Petite.
[35] Test. of Kai Petite. Kai's date of birth is May 31, 2002. Ex. 4 at DHS 45.
[36] Test. of K. Petite.
[37] *Id.*
[38] *Id.*
[39] *Id.*
[40] Test. of J. Petite.

However, he wound up going back to jail, so the time he stayed with his mother was only a couple of weeks.[41] Josh has important mail and packages sent to Ms. Jones' house, because he believes it is safer and more secure than having mail sent to Fond du Lac.[42]

29. Josh was convicted on March 20, 2019, for violating a domestic abuse no-contact order, based on Minn. Stat. § 624.712, subd. 5 (2018).[43] He violated his probation, which was extended for six months. After he met the conditions of probation, including 80 hours of domestic abuse classes, he was discharged from the Carlton County probation on September 16, 2022, at which time the offense was deemed to be a misdemeanor by virtue of Minn. Stat. § 609.13 (2022).[44]

30. Josh is currently on probation for the Anoka County DUI. This probationary period is scheduled to last until September 2024. He is voluntarily at Juel Fairbanks, a treatment program in St. Paul. His participation in his treatment program is not a condition of probation. He checked himself in on September 1, 2022 and expects to remain there for up to two years. He has been in that program in the past.[45]

31. Ms. Jones' eldest son, Donald Jones, lives in St. Paul. Her son Torrey Petite either lives in a treatment center in St. Paul, or in Fond du Lac, or is homeless.[46]

32. Ms. Jones cared deeply about the foster children and was concerned for their welfare.[47]

33. Ms. Jones recognized that KRF needed speech therapy, and worked with the elementary school to make certain that an IEP was in place and that additional services were provided. In addition, Ms. Jones notified the schools when KRF and IRF's mother passed away, and then later, when their father passed away. Ms. Jones took the children to their parents' funerals.[48] Especially after losing their parents, the children seemed to be very strongly attached to Ms. Jones and to need reassurance that Ms. Jones would be there for them.[49]

34. When the Licensees applied for the child foster care license, their bedroom was in the basement. The foster care children slept in a basement bedroom for about the first 11 months. Mrs. Rainey passed away on or about February 18, 2022. Her room had been upstairs. A week or so after she passed away, the Licensees moved upstairs with KRF, IRF, and GS.[50]

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[41] Test. of J. Petite.
[42] *Id.*
[43] *Id.* Court file no. 09-CR-19-211 (Carlton Cty. Dist. Ct.).
[44] Test. of J. Petite.
[45] *Id.*
[46] Test. of R. Jones.
[47] *Id.*
[48] *Id.*
[49] *Id.*
[50] *Id.*

35. At some point, one of the basement bedrooms became Noah's room.

36. The other bedroom was used primarily as an extra storage room.[51]

III. Weekend of August 12 through 15, 2022

37. On the weekend of August 12 through 15, 2022, an annual powwow was held at Grand Portage. The family had a custom of going to that powwow, which is a traditional powwow.[52] On August 13, Ms. Jones and Mr. Rainey took KRF, IRF, GS, and Kai to the Grand Portage powwow. It was very important to Ms. Jones and Mr. Rainey to expose the young children to traditions like the powwow.[53] The family custom of going to the Grand Portage powwow was very important to Kai, and he did not want to miss it.[54] Cheyanne, Delaney, and Linnea stayed behind with various friends. They did not stay at the Licensee's house. There was no one at the house when Ms. Jones and Mr. Rainey left for Grand Portage.[55]

38. On August 12, after the family left, Josh came to the Isanti house. His birthday was August 14, and he was feeling lonely. He knew the family would be gone to the Grand Portage powwow, but wanted to go hang out with the family dogs, so he went to the house. He did not tell his mother he was coming to the house. He had a key to the house for emergency use. He knew he was not supposed to use it to let himself in for the weekend, but he did anyway. Josh was alone, except for the dogs, and relapsed with alcohol. He drank Crown Royal Apple and cheap vodka. He was drinking in Noah's old room, but Noah was not there, because he was in a treatment center. [56]

39. The family left the Grand Portage powwow late in the afternoon of August 14, 2022. They dropped Kai off at his cousin's home in Sawyer, Minnesota, and picked up Cheyanne, where she had been visiting a cousin.[57] They then drove to Buffalo and picked up Noah, who had a two-day pass to go home for a medical appointment.[58]

40. The family – Ms. Jones, Mr. Rainey, the three foster children, Cheyanne, and Noah – all arrived back at the house in Isanti at around 11:30 p.m. on Sunday, August 14. Everyone just dropped their things and went to bed. Ms. Jones did not go downstairs with Noah.[59]

41. While the rest of the family slept, Noah found Josh passed out in Noah's basement bedroom. He also found the liquor Josh had been drinking, and drank what was left of the Crown Royal Apple. He and Josh did not speak to one another. Noah then

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[51] *Id.*
[52] Test. of R. Jones; Test. of C. Rainey.
[53] Test. of R. Jones; Test. of C. Rainey.
[54] Test. of K. Petite.
[55] Test. of R. Jones.
[56] Test. of J. Petite.
[57] Test. of R. Jones and Cheyanne Diver.
[58] Test. of R. Jones.
[59] Test. of R. Jones.

fell asleep somewhere on the basement level, either in his room or possibly on the basement living room couch.[60]

42. On Monday morning, August 15, 2022, Ms. Jones and Mr. Rainey left the house at about 5:30 a.m. Ms. Jones woke Cheyanne before they left, leaving her bedroom door open in case one of the younger children awakened. She told Cheyanne she was driving Mr. Rainey into Minneapolis for work and would be back between 7:30 a.m. and 8:00 a.m.[61] Cheyanne regularly helped to care for the foster children in this way.[62]

43. Ms. Jones dropped Mr. Rainey at work, then drove to Minneapolis and picked up her son, Torrey Petite, who lives in a homeless shelter on Franklin Avenue in Minneapolis, and brought him back to Isanti for the day. They arrived back home sometime between 7:30 a.m. and 8:00 a.m.[63]

44. When Ms. Jones and Torrey returned, Noah was up, and offered to make Ms. Jones an egg sandwich for breakfast. He seemed to be doing well. Ms. Jones was pleased at the offer, and accepted. Cheyanne, Linnea, Delaney, and the foster children were also home.[64]

45. Aware that Noah's probation officer was coming by that day to check in with him, Ms. Jones asked whether he knew when to expect her.[65] He answered "sometime this morning." Later, someone knocked on the door, and the dogs barked. Noah ran up from the basement and answered the door. He stepped outside to talk to Ms. Payne[66], his probation agent, and Mr. Mortenson, a second probation agent who accompanied her. After a few minutes, Ms. Jones joined them outside.[67]

46. Minnesota Teen Challenge asked Ms. Payne to check in on Noah while he was at home on the pass, just to see how he was doing. Mr. Mortenson accompanied Ms. Payne because their office requires two probation officers to go on all home visits.[68]

47. During her visit, Ms. Payne saw Noah, Ms. Jones, and the three foster children.[69]

48. Knowing that Noah was in treatment for chemical dependency, Ms. Payne wanted to make certain that he was not intoxicated while on his home visit. He appeared

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[60] Test. of N. Petite.
[61] Test. of R. Jones.
[62] Test. of C. Diver.
[63] Test. of R. Jones.
[64] *Id.*
[65] *Id.*
[66] Ms. Payne's last name is now legally Arcand, but she continues to use Payne professionally. Test. of Elizabeth Payne. This report will refer to her as Elizabeth Payne.
[67] Test. of R. Jones.
[68] Test. of E. Payne.
[69] *Id.*

to be functioning well, but she determined it was appropriate to give him a preliminary breath test (PBT) to check on his sobriety.[70]

49. Mr. Mortenson conducted the PBT while Ms. Payne was present.[71] Ms. Jones was also present.[72] The initial result of the PBT was 0.09. Noah disputed the accuracy of the result, so Mr. Mortenson administered a second PBT. The result of the second PBT was 0.10. At that point, Noah admitted that he had consumed some alcohol.[73] Ms. Jones was shocked that her son had been drinking.[74]

50. Because he was on a home pass from a treatment center, but on probation, Ms. Payne thought there were three possible options for Noah at that point: he could be allowed to stay at home for the remainder of his pass time, returned to the treatment center, or he could be sent to detention. To consider the possibility of Noah remaining at home, Ms. Payne needed to know that there were no substances in the home. She asked Ms. Jones and Noah whether she could go inside to make sure there were no substances in Noah's possession. Permission was granted.[75]

51. Mrs. Jones remained upstairs while Noah took the probation agents downstairs and showed them where his bedroom was. When asked to collect the alcohol he had been drinking, Noah went into the other bedroom and came out with an empty bottle of Crown Royal Apple whiskey.[76]

52. They went into Noah's room and Ms. Payne asked him to open a drawer in a two-drawer nightstand. The drawer was located about three feet off the ground – at ordinary nightstand height – and had a typical pull handle on it.[77] Inside, the drawer revealed drug paraphernalia, including pieces of tin foil with what appeared to be burnt residue in them, two pipes that appeared to be for using narcotics, a blue rubber tube that appeared to have narcotics residue in it, a syringe, two grinders that appeared to have THC wax residue, and pieces of a green leafy substance. The items were collected in an evidence bag for later testing by the Isanti police department. [78]

53. Noah repeatedly denied that the paraphernalia belonged to him. He stated that the items belonged to his brother, Kai, who sometimes stayed in his room while he was away at treatment.[79]

54. After the paraphernalia was found, Mr. Mortenson supervised Noah in the downstairs bathroom while he provided a urine sample. Mr. Mortenson was able to perform a preliminary screening of the urine sample. It came back positive for alcohol,

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[70] *Id.*
[71] *Id.*
[72] Test. of R. Jones.
[73] Test of E. Payne.
[74] Test. of R. Jones.
[75] Test. of E. Payne.
[76] *Id.*; Test. of Benjamin Mortenson.
[77] Test. of E. Payne.
[78] *Id.;* Ex. 4 at DHS40-41.
[79] Test. of E. Payne; Test. of N. Petite.

THC, and benzodiazepines.[80] While he was in the bathroom, Mr. Mortenson found a glass containing alcohol in the bathroom vanity under the sink.[81]

55. Following the drug test, the probation agents and Noah went back upstairs and showed Ms. Jones what they found in the basement. When she saw the items, Ms. Jones was surprised. She was not aware the items were in her home.[82]

56. Ms. Payne consulted with the treatment center regarding whether the treatment center would allow Noah to return to treatment. They decided Noah should return to the treatment center immediately. Ms. Payne offered Ms. Jones the option of driving Noah back to Buffalo, but Ms. Jones declined. Ms. Payne and Mr. Mortenson arranged to drive Noah to the treatment center in Buffalo themselves.[83]

57. The probation agents waited outside while Noah gathered his belongings for the trip back, including some personal items such as a poster that he had not had with him before. At one point he brought a pair of sneakers out to the car and dropped them. Both Ms. Payne and Mr. Mortenson noticed a puff of white powder when he dropped the sneakers.[84] Mr. Mortenson looked inside and turned them upside down, and a grinder with a waxy residue and a white powdery substance on the outside fell out of the shoe. When he asked Noah about the residue and the powder on the grinder, Noah denied that he knew anything about it.[85] The grinder was also put in an evidence bag and later tested.[86]

58. After Noah arrived back at Minnesota Teen Challenge/Lakeside Academy on August 15, 2022, he was tested for drugs again. Staff reported the results to Ms. Payne. The drug test results were positive for THC, nicotine, alcohol, and benzodiazepines.[87]

59. The foster children were present while the probation agents were talking with Ms. Jones upstairs, but they did not see Josh at any time during their visit on August 15, 2022.[88]

60. When Josh woke up on Monday morning, he saw that his liquor was gone. He talked to his mother. She said he had to leave the house, so he went back to Fond du Lac. He did not see anyone else that morning. Kai was not at the house.[89]

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[80] Test. of E. Payne; Test. of B. Mortenson.
[81] Test. of E. Payne; Test. of B. Mortenson.
[82] Test. of E. Payne; Test. of R. Jones.
[83] Test. of E. Payne.
[84] *Id.*; Test. of B. Mortenson.
[85] Test. of B. Mortenson.
[86] Test. of E. Payne; Test. of B. Mortenson; Test. of Adam Rackow; Ex. 6 at 37.
[87] Test. of E. Payne.
[88] Test.
[89] Test. of J. Petite.

61. Josh understands that, because his mother is a foster parent, and has been most of his life, he cannot bring alcohol or drugs into her home. But he is aware he is an alcoholic. Josh does not have the key to the house any longer.[90]

62. Once the probation agents and Noah were gone, Ms. Jones called Kai and asked whether the paraphernalia that was in the night table in Noah's room belonged to Kai. Kai confirmed it was his.[91]

63. Ms. Payne took the paraphernalia in the evidence bags for testing to the Isanti police department later on August 15, 2022.[92]

64. Officer Adam Rackow is a patrol officer with the City of Isanti police department (IPD). Among his duties, he tests items for the presence of illicit substances. On August 15, 2022, a probation officer brought items to the IPD for testing. Two different tests were conducted. One was a test for methamphetamine. The other test was for the presence of codeine, barbiturates, and amphetamine.[93]

65. The tests performed are the field tests most commonly used by law enforcement and are quite reliable.[94] The photographs in the Department's Exhibit 6 are of the items Officer Rackow tested on August 15, 2022, at Ms. Payne's request, and the results of those tests.[95] The tests immediately indicated positive for methamphetamine, because the tip of the cotton swab showed bright blue when the substance was swabbed with it.[96] The second test showed a positive test for amphetamine, as shown by the brownish color on the indicator on the bag.[97] While it is not clearly shown on the bag, it is possible that the item tested using the second test also contained an opioid of some kind.[98]

IV. AIFACS and Department Follow-up

66. Sabrina Batalden, is the AIFACS foster care licensing worker assigned to work with Ms. Jones and Mr. Rainey.[99] She became aware that there was a concern with Licensees' foster care home on August 16, 2022, when she received a copy of a child protection report (the report) filed in Isanti County concerning the Jones/Rainey home.[100] There were three children in foster care in the home at the time – siblings KRF, who was 5 years old and IRF, who was 7 years old. They were placed in the home on March 13, 2021. The third foster child in the home at this time was GS, who was approximately

[90] *Id*.
[91] Test. of R. Jones and K. Petite.
[92] Test. of E. Payne.
[93] Test. of A. Rackow.
[94] Test. of A. Rackow; Ex. 6 at DHS 33-36.
[95] Test. of A. Rackow; Ex. 6 at DHS 33-37.
[96] Test. of A. Rackow; Ex. 6 at DHS 33-36.
[97] Test. of A. Rackow; Ex. 6 at DHS 37.
[98] Test. of A. Rackow; Ex. 6 at DHS 37.
[99] Test. of Sabrina Batalden.
[100] *Id.*; Ex. 4.

8 months old and had been in the home since being placed there on December 29, 2021.[101]

67. On reading and discussing the report, Ms. Batalden identified a couple of issues that especially raised concerns for her. First, it appeared from reading the report that there were people living in the foster care home of whom AIFACS was not aware. Second, there were the drugs and alcohol found in the home, found in places that were apparently accessible to children.[102]

68. Before receiving the report, AIFACS was not aware that Noah had a chemical abuse problem or that Noah was on probation and in mandatory treatment for the problem.[103]

69. The report also contained allegations that Kai and Joshua were living in the foster care home and that they had histories of substance abuse and possible criminal histories. None of this had been reported to AIFACS before AIFACS received the August 16, 2022, report. Neither had had a background study.[104] Had Kai and Josh's access to Licensees' home been reported, they would have had to have background studies done.[105]

70. The presence of the drugs and alcohol in the home concerned Ms. Batalden and her co-workers because the presence of most of the drugs was contrary to foster care licensing rules. Even drugs and alcohol that were permitted were not stored safely, out of reach of children.[106]

71. Ms. Batalden was also concerned because Ms. Jones had not reported the events of August 15, 2022, to her, despite the fact that they had been in touch via text on that day and Ms. Jones' obligation to notify her licensing agency of changes in household members and of safety concerns that could affect a child.[107]

72. Because of the concerns the report raised, and because Ms. Jones had failed to mention what was happening when they were in touch on August 15, Ms. Batalden decided to go to the Jones/Rainey home on August 16, 2022, to assess the situation and discuss the report with Ms. Jones or Mr. Rainey.[108]

73. When Ms. Batalden arrived at the home, one of Ms. Jones sons answered the door. Ms. Jones denied knowing why Ms. Batalden had come to see her. Ms. Batalden explained that AIFACS had received the child protection report, and asked Ms. Jones to explain what had happened on the previous day in her own words. Ms. Jones did. The foster children were present during Ms. Batalden's visit. Ms. Jones showed Ms. Batalden

[101] Test. of S. Batalden; Ex. 4.
[102] Test. of S. Batalden; Ex. 4.
[103] Test. of S. Batalden; Ex. 4.
[104] Test. of S. Batalden; Ex. 4.
[105] Test. of S. Batalden; Ex. 4.
[106] Test. of S. Batalden; Ex. 4.
[107] Ex. 7 at 39; Test. of S. Batalden.
[108] Test. of S. Batalden.

where the paraphernalia had been found, and they looked in the closet as well. The drawer did appear to be accessible to the children and was not locked or lockable. They also looked at the bathroom where the alcohol was found in the cabinet under the sink, which also was not locked.[109]

74. Ms. Batalden spoke with Ms. Payne, the probation officer, on August 17, 2022. Ms. Payne informed Ms. Batalden that there had been about 11 police calls to the home over the past couple of years.[110]

75. Of those calls, many dealt with Noah's truancy and alcohol problems. Ms. Batalden was particularly concerned about a report concerning a police call made on February 20, 2022. Mr. Rainey had requested police assistance because he was concerned about Josh's erratic behavior the night after Carol Rainey, Mr. Rainey's mother, passed away. He said that Josh was "hallucinating and trying to jump the fence." Josh had helped with Mrs. Rainey's medical care, going with her to her treatment appointments, and her death was very difficult for him. When he began to act bizarrely the night after she died, Mr. Rainey and Ms. Jones felt unable to cope with him, so they called the Isanti police. Officer Adam Rackow checked in with Josh, who said he had not taken any illegal drugs and he was fine. Officer Rackow did not believe that Josh was a danger to himself or others. He reported his conclusion back to Mr. Rainey and left.[111]

76. The police reports – none of which Ms. Batalden was aware, because Licensees did not report any of them to AIFACS – contributed to Ms. Batalden's decision to recommend a TIS in this case. Ms. Batalden was concerned that the foster children were being put at risk and the Licensees were not involving AIFACS. The nature and extent of the foster parents' failure to report what was going on in their home led Ms. Batalden and AIFACS to be worried that they would not be able to protect the foster children.[112]

77. AIFACS is licensed by the Department to do front line licensing work. For licensing sanctions beyond a correction order, AIFACS makes a recommendation to the Department, which makes the final decision regarding a sanction.[113]

78. On August 18, 2022, after reviewing the child protection report, talking to Ms. Payne, and visiting the Licensee's home, Ms. Batalden wrote a report recommending that the Department issue a temporary immediate suspension of the Licensees' child foster care license.[114]

79. Mary Kelsey is the foster care licensing manager in the Licensing Division of the Office of Inspector General at the Department. Following a multi-level review by

[109] Test. of S. Batalden.
[110] *Id.* Ex.5 at DHS 27, 33, 34, 39.
[111] Ex. 5 at DHS 33, 34; Test. of R. Jones. Test. of C. Rainey.
[112] Test. of S. Batalden.
[113] Test. of Mary Kelsey.
[114] Test. of S. Batalden; Ex. 8.

staff in her area, including staff who work with AIFACS, a unit supervisor, and an attorney from the Department's legal office, Ms. Kelsey gave final approval to the Order of TIS.[115]

80. The TIS was issued, based upon the determination of imminent risk of harm based on drugs and drug paraphernalia found in locations that were accessible to children in the home. The imminent risk of harm included the presence in the home of individuals with histories of drug use and criminal histories, who had not been reported to AIFACS or the Department and for whom no background studies had been conducted.[116]

81. The Department issued the TIS Order on August 19, 2022.[117] On the same day, Ms. Batalden personally served the Licensees with the TIS Order.[118] Before the TIS order was served, the foster children were removed from Licensees' home.[119]

82. The Department received the Licensees' appeal of the TIS on August 25, 2022, and this contested case followed.[120]

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

CONCLUSIONS OF LAW

1. The Commissioner and the Office of Administrative Hearings have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 14.50, 245A.07, .08 (2022).

2. Licensees received sufficient notice of the allegations against their license, and of the time and place of the hearing.

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

4. The appeal of the Order of Temporary Immediate Suspension was timely. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

5. If a license holder's actions or failure to comply with applicable law or rule, or the actions of other individuals or conditions in the program pose an imminent risk of harm to the health, safety, or rights of persons served by the program, the Commissioner shall act immediately to temporarily suspend the license.[121]

6. When an order for a TIS is appealed, the scope of the hearing shall be limited solely to the issue of whether the TIS should remain in effect pending the

[115] Test. of M. Kelsey; Ex. 8.
[116] Test. of M. Kelsey; Ex. 1.
[117] Ex. 1.
[118] Ex. 2; Test. of S. Batalden.
[119] Test. of S. Batalden.
[120] Ex. 3 at DHS 75.
[121] Minn. Stat. § 245A.07, subd. 2 (2022).

Commissioner's final order with respect to a licensing sanction issued under Minn. Stat. § 245A.07, subd. 3.[122]

7. The burden of proof is on the Department to demonstrate that reasonable cause exists to believe that the license holder's actions or failure to comply with applicable law or rule, or the actions of other individuals or conditions in the program, pose an imminent risk of harm to the health, safety, or rights of persons served by the program.[123]

8. A background study is required of "an individual who . . . may have unsupervised access to children . . . receiving services from a program, when the commissioner has reasonable cause as defined in section 245C.02, subdivision 15 . . .."[124]

9. "The commissioner has reasonable cause to require a background study when the commissioner has received a report . . . indicating that the subject has a history that would disqualify the individual or that may pose a risk to the health or safety of persons receiving services."[125]

10. "Reasonable cause" means there exist specific articulable facts or circumstances which provide the Department with a reasonable suspicion that there is an imminent risk of harm to the health, safety, or rights of persons served by the program.[126]

11. The Department has demonstrated that there is reasonable cause to believe that the Licensees' actions, or failure to comply with applicable law or rule, or the actions of other individuals or conditions in the program, pose an imminent risk of harm to the health, safety, or rights of the persons served by the program.

12. Any Conclusion of Law more properly considered a Finding of Fact is adopted herein.

13. Any portion of the Memorandum more properly considered as a Finding of Fact is incorporated herein.

Based upon these Conclusions of Law, and for the reasons explained in the accompanying Memorandum, which is hereby incorporated by reference, the Administrative Law Judge makes the following:

[122] Minn. Stat. § 247A.07, subd. 2a.
[123] *Id.*
[124] Minn. Stat. § 245C.03, subd. 1(6) (2022).
[125] Minn. Stat. § 245C.02, subd. 15 (2022).
[126] *Id.*

RECOMMENDATION

The Commissioner should **AFFIRM** the temporary immediate suspension of the Licensees' child foster care license pending the Commissioner's final order with respect to a licensing sanction issued under Minn. Stat. § 245A.07, subd. 3.[127]

Dated: December 14, 2022

LAURASUE SCHLATTER
Administrative Law Judge

Reported: Digitally Recorded
No transcript prepared

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. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions of Law, and Recommendations. The parties have ten calendar days after receiving this report to file exceptions to the report. At the end of the exceptions period, the record will close. The Commissioner then has ten working days to issue 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.

Under Minn. Stat. § 14.62, subd. 1 (2022), the agency is required to serve the final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

[127] Minn. Stat. § 247A.07, subd. 2a.

MEMORANDUM

I. Legal Standards

The scope of an expedited hearing on an appeal of an order for TIS is limited solely to the issue of whether the suspension of the license holder's license should remain in effect pending the Commissioner's final order regarding a licensing sanction under Minn. Stat. § 245A.07, subd. 3.[128] The burden of proof is on the Department to demonstrate that reasonable cause exists to believe that the license holder's actions or failure to comply with applicable law or rule, the actions of other individuals, or conditions in the program pose an imminent risk of harm to the health, safety, or rights of persons served by the program.

The statute defines "reasonable cause," as follows:

> [T]here exist specific articulable facts or circumstances which provide the Commissioner with reasonable suspicion that there is an imminent risk of harm to the health, safety, or rights of persons served by the program.

The "reasonable cause" burden of proof is a fairly modest standard, intended to ensure that vulnerable children are protected until there can be a full hearing and final determination of any possible licensing sanction under Minn. Stat. § 245A.07, subd. 3, .08.

The Administrative Law Judge must also determine if the evidence shows that the license holder's actions, or the actions of another individual or conditions in the program at the time of the hearing, continue to pose an imminent risk of harm.[129] This determination is made so as to inform the Commissioner as to whether the suspension should continue pending final determination of any appropriate licensing sanction.[130]

Licensees argued in their closing that the Department must meet the "substantial evidence" test articulated in the *Strecker* case[131] in order to prevail. *Strecker,* which also involved a temporary immediate suspension of a human services license, required the Department to support with "substantial evidence" its "reasonable belief" that children served by the licensed program were at imminent risk of harm. At the time of the *Strecker* decision, "reasonable cause" was not defined. The court equated "reasonable cause" with "probable cause" and then went on to say it "requires the existence of circumstances sufficient to warrant a cautious person to reasonably believe that [the Licensee] posed an imminent risk of harm . . .."[132] The court considered "whether the record otherwise

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[128] Minn. Stat. § 245A.07, subd. 2a.

[129] *See In the Matter of the Temporary Immediate Suspension of the Family Child Care License of Angie Mattison,* 2016 WL 2946022, slip op. at *3 (Minn. Ct. App. May 23, 2016) (unpublished).

[130] Minn. Stat. § 245A.07, subd. 2a(a) ("The scope of the hearing shall be limited solely to the issue of whether the temporary immediate suspension should remain in effect pending the commissioner's final order under section 245A.08, regarding a licensing sanction issued under subdivision 3").

[131] *In re Temporary Immediate Suspension of Family Child Care License of Strecker,* 777 N.W.2d 41, 46 (Minn. Ct. App. 2010).

[132] *Id.*

contain[ed] substantial evidence to support a reasonable belief that [Licensee] poses an imminent risk of harm . . .."[133] The substantial evidence test means:

> (1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety.[134]

In response to the *Strecker* decision, the 2010 legislature amended Minn. Stat. § 245A.07, subd. 2a, to add the definition of "reasonable cause" quoted above.[135]

Requiring the Department to demonstrate that "articulable facts or circumstances" exist to support a "reasonable suspicion that there is an imminent risk of harm" is not a lesser standard than the substantial evidence standards long recognized by Minnesota courts and enumerated in *Strecker.* Moreover, it is the standard set forth in the statute. Therefore, it is the proper standard to apply.

II. Analysis

Licensees argue that the TIS should be revoked because the Department had failed to demonstrate that the foster children were at imminent risk of harm, or would be in the future. They contend the Department is "piling on marginal information." improperly The Licensees reason that, because they disclosed Noah's information and the information that they had foster children in their home to his probation officer, that should have been sufficient. The Licensees stated that they took efforts to ensure that no drugs or alcohol were in their home. They denied that Ms. Jones' sons live in the home. They maintain that they have strict boundaries - pointing out that when Josh lost control following Mrs. Rainey's death, Mr. Rainey called the police. Finally, the Licensees argue that it was harmful to the children to remove them from the Licensees' custody and that the Licensees are good foster parents, good for children, and the kind of people the state and AIFACS are looking for to care for kids.

The Department argues that the presence of alcohol, drugs, and drug paraphernalia which were accessible to children presented an imminent risk of harm. In addition, according to the Department, the Licensees' failure to accurately report who was living in their home, and who had access to their home and to the children, prevented the Department from conducting necessary background studies. The Department was further concerned because the Licensees failed to report the events of August 15, 2022, to AIFACS until Ms. Jones was directly confronted with them by Ms. Batalden.

The Department has shown that there exist specific articulable facts or circumstances which support a reasonable suspicion that there is an imminent risk of harm to the health, safety, or rights of persons served by the program. Not only were the

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[133] *Id.*
[134] *Id.* (internal citations omitted).
[135] 2010 Minn. Laws ch. 329, art. 1, § 7.

drug paraphernalia, including at least trace amounts of methamphetamines, marijuana, and possibly benzodiazepines and opioids, accessible to children found in the Licensees' home. Equally troubling, the Licensees did not know the materials were there, or how long they had been there. The evidence shows that they were most likely in the night table drawer for two and a half months – from the end of May until August 15 – without the Licensees' knowledge.

Nor were the Licensees aware that Josh had been in their home after they left on August 12 until the morning of August 15. Ms. Jones interacted with Noah, whose PBT test was at least 0.09 on the morning of August 15. He made her breakfast, and they talked. She perceived that he was doing well and failed to notice that he had been drinking. Ms. Jones did not think to report the events of August 15 to AIFACS, even when she was in contact with Ms. Batalden.

These facts point to a lack of awareness on the part of the Licensees of what is happening in their own home. This lack of awareness itself creates a dangerous situation for the foster children.

Finally, the troubling histories of Ms. Jones' sons, and her failure to understand the connection between their histories, their current conditions, and the safety of the foster children is very relevant to the question of the children's ongoing risk of harm. There was no evidence or testimony from the Licensees about what they might be doing to reduce the risk of harm to the foster children, should they be returned to the Licensees' home. For example, while the Licensees talked about drawing strict boundaries, there was no testimony from either of them about how they might limit Ms. Jones' sons access to the house and the foster children. On August 16, 2022, when Ms. Batalden arrived to talk to Ms. Jones, one of Ms. Jones' sons answered the door. It was not clear from the testimony which son it was – but the foster children were also home. What is clear is that there is no assurance of any plan in place to avoid a repetition of the weekend of August 12 through 15, 2022.

III. Conclusion

While the Administrative Law Judge understands the Licensees sincerely care for and hope to raise foster children, the Department demonstrated reasonable cause to believe that it must keep the TIS Order in place pending the Commissioner's final order with respect to a licensing sanction issued under Minn. Stat. § 245A.07, subd. 3.[136] Therefore, the Administrative Law Judge respectfully recommends that the Commissioner affirm the August 19, 2022, TIS Order.

L.S.

[136] Minn. Stat. § 247A.07, subd. 2a.