

STATE OF MINNESOTA  
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Application of  
Vivian Fisher for a Family Day Care  
License.

FINDINGS OF FACT  
CONCLUSIONS and  
RECOMMENDATION

The above-entitled matter came on for hearing before Allan W. Klein, Hearing Examiner, on May 22, 1979, at the Hennepin County Government Center, Minneapolis, Minnesota.

Kenneth O. Bryant, Legal Advocate, appeared on behalf of the Hennepin County Welfare Department. Neither Ms. Fisher nor any person representing her appeared. Therefore, this matter will be treated as a default proceeding.

Based upon the file in this matter, the Hearing Examiner hereby makes the following:

FINDINGS OF FACT

1. This contested case arose from an Order for Hearing dated August 25, 1978, signed by Edward J. Dirkswager, Jr., then Commissioner of Public Welfare.

2. An affidavit of mailing, signed by K. O. Bryant, indicates that the Order was mailed to Ms. Fisher on March 29, 1979.

3. The Order set the hearing for May 15, 1979. However, on May 10, 1979, the matter was continued to May 22, 1979. This continuance was noticed to Ms. Fisher by a letter dated May 10, 1979, addressed to Ms. Fisher at the address where the original order was sent.

4. The order, in paragraph 6, gives notice that:

a. A Notice of Appearance must be filed with the Hearing Examiner at least ten days prior to the hearing if the party intends to appear, and

b. Failure to appear at the hearing may result in the allegations of the Order for the Hearing and Exhibit A being taken as true.

5. Exhibit A states that in August of 1978, Gayle Wescott sent a letter to Ms. Fisher stating that her application for a family day care license was going to be denied based upon four grounds set forth in the letter. The Order further states that in September of 1978, Fisher's application for a license was formally denied.

6. The grounds set forth in the letter were:

a. That Ms. Fisher has encountered numerous problems and personal crises, including continual financial crises;

b. That Ms. Fisher has had a number of health problems, and that she had not submitted a medical form, signed by a doctor, stating that she is in good health so as to be able to adequately care for young children;

- c. That Ms. Fisher has failed to cooperate with school and agency personnel with respect to a daughter's school problems;

d. That Ms. Fisher has failed to cooperate with agency personnel on a number of occasions.

Each of the foregoing items was more fully explained in Exhibit A.

7. Neither Ms. Fisher, nor any person representing her, filed a Notice of Appearance.

8. Neither Ms. Fisher, nor any person representing her, appeared at the hearing. The Examiner, and agency personnel, remained at the location of the hearing for 35 minutes from the time set for hearing, but Ms. Fisher neither appeared nor telephoned.

9. Minn. Rule 9 MCAR sec. 2.205 requires a party intending to appear at a contested case hearing to file a Notice of Appearance with the Hearing Examiner to indicate the party's intent to appear.

10. Minn. Rule 9 MCAR sec. 2.208 provides that an agency may dispose of a contested case adverse to a party who defaults, and that upon default, the allegations of the Order for Hearing may be taken as true without further proof. The Rule also provides that a default occurs when a party fails to appear at a hearing.

11. For the purposes of this proceeding, the allegations set forth in Exhibit A to the Order of Hearing shall be taken as true.

Based upon the foregoing, the Hearing Examiner hereby makes the following:

#### C O N C L U S I O N S

1. That the Department and the Hearing Examiner have jurisdiction in this matter.

2. That the Department has fulfilled all relevant, substantive and procedural requirements of law or rule.

3. Vivian Fisher did violate Minn. Rule 9 MCAR sec. 2.205 by failing to file a Notice of Appearance.

4. Vivian Fisher did not violate any provision of Minn. Rule 12 MCAR sec. 2.2002 because of financial crises. There is no provision of the Rule which relates to such matters.

5. Vivian Fisher did violate Minn. Rule 12 MCAR sec. 2.2002.D.3.a and b. by failing to provide medical data to the Agency.

6. Vivian Fisher did not violate Minn. Rule 12 MCAR sec. 2.002.D.I.c. in connection with her daughter's school problems. The daughter was never placed in foster care or residential treatment for emotional disturbance, and no provision of the rule covers the situation that did occur.

7. Vivian Fisher did violate Minn. Rule 12 MCAR sec. 2.002.D.2. by demonstrating an unwillingness to work cooperatively with the Agency.

Based upon the foregoing, the Hearing Examiner hereby makes the following:

R E C O M M E N D A T I O N

That the denial of the application by Vivian Fisher for a family day care license be affirmed.

Dated this 13th day of June, 1979.

ALLAN W. KLEIN  
Hearing Examiner

N O T I C E

Notice is hereby given that, pursuant to Minn. Stat. sec. 15.0421 (1978), the final decision of the Department of Public Welfare shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Department. Exceptions to this Report, if any, shall be filed with the Commissioner of Public Welfare, Mr. Arthur E. Noot, 4th Floor, Centennial Office Building, St. Paul, Minnesota - 55155.

M E M O R A N D U M

On May 24, 1979, the Examiner received a telephone call from Kenneth Bryant. Bryant stated that he had just received a message indicating that Vivian Fisher had called him that morning. The message further indicated that Fisher was upset because she had not been aware of the hearing scheduled for May 22nd. Fisher apparently stated that she had not received notice of the nearing continuance. She was to call Bryant back.

The Examiner informed Bryant that when he talked with Fisher again (which Bryant thought would be soon after his conversation with the Examiner), he should ask Fisher to call the Examiner.

As of the date of this Order, Fisher had not called either the Examiner or Bryant.