

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Temporary Immediate
Suspension of the Family Child Care
License of Lisa Hauer

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

This matter came on for hearing before Administrative Law Judge Mary E. McGinnis, on December 21, 2011, at the Anoka County Government Center, in Anoka, Minnesota, pursuant to the Minnesota Department of Human Services' (Department) November 23, 2011 Notice Of And Order For Hearing. The OAH record closed at the hearing's conclusion.

Francine P. Mocchi, Assistant Anoka County Attorney, appeared for Anoka County Human Services (County) and the Department. George C. Riggs, Attorney at Law, appeared for Lisa Hauer (Licensee).

STATEMENT OF ISSUE

Should the temporary immediate suspension of the family child care license of Lisa Hauer remain in effect because there is reasonable cause to believe that there is an imminent risk of harm to the health, safety, or rights of children in her care.

The Administrative Law Judge concludes that there is no reasonable cause to believe that Ms. Hauer failed to comply with supervision statute and rules; poses any imminent risk of harm to the health, safety, or rights of children in her care; or violated the Settlement Agreement.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Lisa Hauer has been a licensed provider of family child care since approximately 2009.¹ Since September 20, 1997, she has been married to Troy Hauer. They have two children: B.H. born on February 5, 2004, and R.H, born on March 11, 2006.²

¹ Testimony of Lisa Hauer.

² Ex.1, p. 100064.

2. On February 18, 2009, at 11:15 P.M., Mr. Hauer pushed Ms. Hauer to the floor; squeezed his hands around her neck; and kicked her, at least four times, in the back of the head. On February 20, 2009, Ms. Hauer obtained a domestic abuse Order to Show Cause and ExParte Order for Protection against her husband.³

3. On March 1, 2009, Ms. Hauer, while represented by counsel, moved to dismiss the February 20, 2009 ExParte Order for Protection. Her motion was granted. Ms. Hauer believed her husband's statements that he would never "lay a hand on her again," and would quit drinking alcohol.⁴

4. The Petitioner's husband was charged with misdemeanor domestic abuse for the February 18, 2009 assault. This was reduced to a disorderly conduct charge to which he pled guilty.⁵

5. As a result of the February 18, 2009 assault, Mr. Hauer was deemed by the County and the Department as a disqualified person to have access or direct contact with the Ms. Hauer's day care children; a determination which would cause her license to be revoked. However, on June 9, 2009, the County recommended to the Department that Ms. Hauer's day care license be granted a variance, allowing her to operate her day care as long as her husband was not in the home.⁶

6. On Sunday, April 18, 2010, at 1:20 AM., at the family home, Mr. Hauer head-butted Ms. Hauer, and broke her nose.⁷

7. On April 19, 2010, Mr. Hauer was charged by criminal complaint with the felony of Assault in the Third Degree (infliction of substantial bodily harm), and misdemeanor domestic assault against Ms. Hauer on April 18, 2010.⁸

8. On April 21, 2010 the Department denied Ms. Hauer the 2009 variance and ordered revocation of her license.⁹ On April 29, 2010, Ms. Hauer obtained a domestic abuse Order to Show Cause and ExParte Order For Protection against her husband.¹⁰

9. On April 29, 2010, Ms. Hauer obtained a domestic abuse Order to Show Cause and ExParte Order For Protection against her husband.¹¹

10. On May 10, 2010, Ms. Hauer moved to dismiss her April 29, 2010 ExParte Order For Protection pursuant to an agreement that the Hauer's would initiate marriage dissolution proceedings, which would include restraining and exclusion provisions. Both

³ Ex 1, pp. 100001 – 100012.

⁴ Ex.1, p. 100014; Test. L. Hauer.

⁵ Testimony of Sarah Mathias.

⁶ *Id.*

⁷ Test. L. Hauer.

⁸ Ex. 1, p.100031.

⁹ Test. S. Mathias; Ex. 1, pp. 100041 – 100044.

¹⁰ Ex.1., pp. 100048 – 100055.

¹¹ Ex.1., pp. 100048 – 100055.

Ms. Hauer and her husband were represented by attorneys during this court appearance.¹²

11. On August 17, 2010, the Department, the County, and Ms. Hauer reached an agreement regarding the revocation of her day care license, which was memorialized in the document entitled "Settlement Agreement". Pursuant to the Settlement Agreement the Department granted Ms. Hauer a conditional day care license for two years. Ms. Hauer agreed that:

- a. Her husband would not reside at the residence;
- b. Her husband would not be in the residence during child care hours;
- c. Her husband would not have access to any individuals served by the child care program.

There is a non-public portion of the Settlement Agreement, the relevant portions of which are substantively a re-statement of the public portion.¹³

12. Since the August 17, 2010 Settlement Agreement, Mr. Hauer would go to Ms. Hauer's home to pick up, and return his own children for parenting time. Also, he would stop at the home uninvited on weekends, or after his work. Occasionally he would do repairs around the house, and give Ms. Hauer child support money. He has removed his clothes, his tools, and his motorcycle from the home. He has stayed overnight on five or six occasions. Ms. Hauer does not invite her husband to the house nor to spend the night.¹⁴

13. In June of 2011 while Ms. Hauer and her children were in Florida, Mr. Hauer entered the home and stayed there. This was shocking to Ms. Hauer because she had had the locks changed, and he obviously had a key to the home. Mr. Hauer left before Ms. Hauer returned.¹⁵

14. On August 7, 2011, Mr. Hauer trapped Ms. Hauer in the home's bathroom, and intentionally poked her in the right eye causing swelling and pain.¹⁶

15. Ms. Hauer was convinced by her father that she and her husband should save on attorney fees, and mediate their divorce. In September 2011, Ms. Hauer signed a joint agreement to dismiss their pending marital dissolution proceedings.¹⁷

16. On October 18, 2011, at 8:30 P.M. Mr. Hauer came to Ms. Hauer's home intoxicated. He threw a plate of food at her and screamed "If I had to do it all over again

¹² Test. L. Hauer; Ex.1, p.100047.

¹³ Ex.1, pp. 100057-100060.

¹⁴ Test. L. Hauer.

¹⁵ Test. L. Hauer.

¹⁶ Ex.1, p. 100092.

¹⁷ Test. L. Hauer.

I would break your nose again. I wish you were fucking dead.” Mr. Hauer was arrested by the Anoka County Sheriff’s Department.¹⁸

17. On October 28, 2011, Ms. Hauer’s new Petition For Dissolution of Marriage, and on October 31, 2011, her Petition for a domestic abuse Order for Protection were filed with the court.¹⁹

18. On November 15, 2011, at 9:38 A.M., Sarah Mathias of Anoka County Child Care Licensing made an unannounced visit to Ms. Hauer’s residence. No one answered Ms. Mathias’ knock. Ms. Mathias could hear Ms. Hauer’s voice, which she believed was coming from the attached garage. She heard Ms. Hauer say, “He’s saying I kicked him in the balls.” Through the front window Ms. Mathias observed an infant in a bouncy seat along with other children, but not Ms. Hauer. Ms. Mathias heard the baby making noises, and a child say that “there was someone at the door.” Ms. Mathias telephoned her supervisor, and discussed the lack of response. Ms. Hauer opened the front door at 9:50 A.M., smelling of cigarette smoke. Ms. Hauer had been on the telephone, and was distressed because she just had received notification that her husband had petitioned for a domestic abuse order against her.²⁰

19. Ms. Mathias agreed that the Order for the Immediate Suspension of Ms. Hauer’s day care license was not based upon Ms. Mathias’ belief that Ms. Hauer was unable to hear the children, but was based upon her belief that Mr. Hauer resided in the home.²¹

20. On November 16, 2011, Mr. Hauer filed with the court his own domestic abuse Petition for an Order for Protection against Ms. Hauer. Mr. Hauer stated in his Petition that he resided in the home with Ms. Hauer.²²

21. On November 22, 2011, Judge Thomas M. Fitzpatrick, of the Tenth Judicial District, conducted an evidentiary hearing on both of the Hauer’s Petitions. Both parties were represented by counsel. Both parties testified.²³

22. By Order dated November 28, 2011, Judge Fitzpatrick rejected Mr. Hauer’s claims, and denied his Petition for an Order For Protection.²⁴

23. On November 28, 2011, Judge Fitzpatrick granted Ms. Hauer’s Petition, and issued an Order For Protection on her behalf. However, the Judge specifically found that there was not sufficient evidence that Mr. Hauer had committed domestic

¹⁸ Ex.1, p. 100091; Ex. 2; Test. L. Hauer.

¹⁹ Ex.1, p. 100071, and p. 100088.

²⁰ Test. S. Mathias.

²¹ *Id.*

²² Ex. 1, p. 100102.

²³ Ex. 1, pp. 10077-10085; Test. L. Hauer and S. Mathias.

²⁴ Ex. 1, p. 100100.

abuse against his children as had been alleged in the Petition on the dates of June 18, 2011 and September 21, 2011.²⁵

24. Since August 2010, Melissa Doercher has had her four-year-old enrolled at Ms. Hauer's day care. She has met Mr. Hauer three times. The first time was on a weekend day when she was interviewing for a day care. Mr. Hauer was in the driveway returning his children. The next two occasions she met Mr. Hauer were again in the driveway, when he was picking up his own children. There was no conversation between Mr. Hauer and Ms. Doercher.²⁶

25. Amy Horne has had her daughter enrolled in Ms. Hauer's day care for the past two years. She has never encountered Mr. Hauer.²⁷

26. For the last year Anna Fager had her son enrolled in Ms. Hauer's day care. She is one of the first parents to drop her son off in the morning, and one of the last to pick him up in the evening. She had never seen Mr. Hauer in the presence of any day care child. She did see Mr. Hauer in the driveway of the home when picking up her own child.²⁸

27. For the last ten years Jean Bertolani has been a neighbor and close friend of Ms. Hauer. She has seen Mr. Hauer at the home, but only in the evening hours after 6:30 P.M. or on the weekends. She has never seen him in the morning or during daytime hours at the house.²⁹

28. For over eight years Kelly Patton has been a neighbor and friend of Ms. Hauer. Ms. Patton has seen Mr. Hauer at the family home only on weekends or later in the evening picking up or dropping off their children.³⁰

29. At the present time there is a Domestic Abuse No Contact Order (DANCO) in effect prohibiting Mr. Hauer from any contact with Ms. Hauer or her residence subject to the revocation of his criminal release conditions and further penalties.³¹

30. At the present time there is the November 28, 2011 Order For Protection in effect prohibiting Mr. Hauer from having any contact with Ms. Hauer or her home subject to further criminal charges.³²

²⁵ Ex. 1, pp.10077-10085.

²⁶ Testimony of Melissa Doercher.

²⁷ Testimony of Amy Horne; Ex. 7.

²⁸ Ex. 3; Test. S. Mathias.

²⁹ Ex. 6.

³⁰ Ex. 5.

³¹ Test. S. Mathias.

³² Ex. 1, pp.10077-10085.

31. At the present time there is a new marital dissolution proceeding by Ms. Hauer against Mr. Hauer with the statutory restraining and exclusions provisions in effect.³³

32. Since the August 17, 2010 Settlement Agreement, Ms. Hauer's husband did not reside with her and the children in the day care home; he never was in the residence during child care hours; and, he never had access to the children in the Ms. Hauer's day care program.

33. On November 23, 2011, the County requested assignment of an administrative law judge. On December 1, 2011, the County served the Notice and Order for Hearing on Ms. Hauer by U.S. Mail.

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

CONCLUSIONS OF LAW

1. The Commissioner of Human Services and the Administrative Law Judge have jurisdiction to consider this matter pursuant to Minn. Stat. § 245A.07, subds. 2a, and 14.50 (2010). The Department gave proper and timely notice of the hearing and has fulfilled all procedural requirements of law and rule.

2. Providers of family child care are required to be within sight or hearing of an infant, toddler, or preschooler at all times so that the caregiver is capable of intervening to protect the health and safety of the child. For the school age child, it means a caregiver being available for assistance and care so that the child's health and safety is protected.³⁴

3. 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.³⁵

4. If a license holder appeals an order immediately suspending a license, the Commissioner shall request assignment of an administrative law judge within five working days of receipt of the license holder's timely appeal. A hearing must be conducted within 30 calendar days of the request for assignment.³⁶

5. 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

³³ Test. S. Mathias.

³⁴ Minn. R. 9502.0315, subp. 29a (2009).

³⁵ Minn. Stat. § 245A.07, subd. 2

³⁶ Minn. Stat. § 245A.07, subd. 2a(a).

final order under section 245A.08, regarding a licensing sanction issued under subdivision 3 following the immediate suspension.³⁷

6. The burden of proof in expedited hearings on a temporary immediate suspension shall be limited to the Commissioner's demonstration that reasonable cause exists to believe that the license holder's actions or failure to comply with applicable law or rule poses an imminent risk of harm to the health, safety, or rights of persons served by the program.³⁸ "Reasonable cause" means there exist specific articulable facts or circumstances which provide a reasonable suspicion that there is an imminent risk of harm to the health, safety, or rights of persons served by the program.³⁹

7. The Commissioner has not demonstrated that there is reasonable cause to believe that the Ms. Hauer has failed to comply with supervision rules thus posing an imminent risk of harm to the health, safety, or rights of children served by her program.

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

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner of Human Services DISMISS the temporary immediate suspension of the family child care license of Lisa Hauer.

Dated: January 3, 2012

s/Mary E. McGinnis
MARY E. MCGINNIS
Administrative Law Judge

Reported: Digitally recorded (no transcript prepared)

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services (Commissioner) will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. §§ 14.61 and 245A.07, subd. 2a (b), the parties adversely affected have ten (10) calendar days to submit exceptions to this Report and request to present argument to the Commissioner. The record shall close at the end of the ten-day period for submission of exceptions. The Commissioner then has ten (10) working days from the close of the record to issue her final decision. Parties should

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

contact Lucinda Jesson, Commissioner of Human Services, Box 64998, St. Paul, MN 55155, (651) 431-2907, to learn the procedure for filing exceptions or presenting argument.

Under Minn. Stat. § 14.62, subd. 1, the agency 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

The Department's concern for the children in Ms. Hauer's daycare home is that they are at risk by Ms. Hauer failing to report "her spouse's presence at her home let alone the incidents of ongoing abuse in her home."⁴⁰ However, the Department does not cite any statute or rule which would require Ms. Hauer to do so. The Department entered into a Settlement Agreement with the full knowledge that Mr. Hauer had assaulted her in the past. Even so, the Department through its Settlement Agreement did not prohibit Mr. Hauer from her home nor did it require Ms. Hauer to report any future abuse in her home.

The issue here is whether the day care conditions posed an imminent risk of harm to the health, safety, or rights of the day care children in her care by violating the Settlement Agreement, statute or rule.

Ms. Mathias conceded that the basis for the recommendation for an Order of Temporary Immediate Suspension was not her belief that Ms. Hauer was not within hearing distance of her day care children on November 18, 2011, when she made her unannounced visit. The issue is not whether, by being on the telephone in another part of the house, Ms. Hauer was within sight or hearing of an infant, toddler, or preschooler at all times so that the caregiver is capable of intervening to protect the health and safety of the child. Licensing Social Worker Sarah Mathias agreed that she only "believed" that Ms. Hauer could not hear the children, and that it was plausible that she could hear the children. Ms. Mathias stated that the immediate suspension of Ms. Hauer's day care license was due to the belief that Ms. Hauer's husband had been residing in the home, although not twenty-four hours per day, seven days per week.

It was only after speaking with Ms. Hauer on November 15, 2011, and reading Ms. Hauer's and Mr. Hauer's respective Petitions for Orders for Protection, that Ms. Mathias believed Mr. Hauer had been residing in the home in violation of the Settlement Agreement.

There are no articulable facts upon which to find that Mr. Hauer has been residing in the family home with Ms. Hauer since the Settlement Agreement. The only person, who has stated that Mr. Hauer has resided in the home, is Mr. Hauer in his Petition for an Order For Protection. The Judge who heard Mr. Hauer testify at the domestic abuse evidentiary hearing rejected Mr. Hauer's claims as failing to meet his

⁴⁰ Lisa Hauer Exhibit A attached to County's December 1, 2011 letter to Administrative Law Judge.

burden of proof. Mr. Hauer's Petition was blatantly retaliatory against Ms. Hauer, coming immediately after he was served with her Order For Protection. His interests are and were adverse to Ms. Hauer's.

Neighbors and day care parents saw no evidence that Mr. Hauer was residing in the home. Ms. Mathias saw nothing to indicate that Mr. Hauer was living in the home. Ms. Hauer denied vehemently that her husband resided in the home. There is nothing to suggest that Mr. Hauer had access to the day care children or had ever indicated an interest in having access to the children.

The Settlement Agreement did not prohibit Mr. Hauer from staying overnight at the family home, or stopping by the family home in the evening or weekends when day care children would not be present.

The Department's remaining concern is that Ms. Hauer will, as she has done in the past, dismiss her present Order For Protection and new dissolution proceeding. The Department argues that

While one may choose to assume risk on their own behalf, it is poor judgment and reckless to assume such risk on behalf of children or place additional risk on those children served by a child care licensing program . . . Ms. Hauer has not followed the licensing rules, she has not complied with the terms of her settlement agreement and conditional license and most importantly has lacked honesty and judgment to ensure the health, safety and welfare of the children served by her program.⁴¹

However, there are no licensing rules or terms of the Settlement Agreement that require Ms. Hauer not to dismiss her Orders for Protection or prior dissolution proceeding. When Ms. Hauer and the Department entered into the Settlement Agreement she had already dismissed a prior Order for Protection, yet no such terms were included in the Agreement.

Ms. Hauer has not been dishonest. Ms. Hauer was not required by the Settlement Agreement or any rule or statute to report to the Department that she had dismissed Orders For Protection against Mr. Hauer or dismissed her first dissolution proceeding, or that she was being assaulted and terrified by Mr. Hauer. Ms. Hauer believed that, as the assaults were not about her day care or during her day care, they were her private problem. Yet, she had no hesitation about telling Ms. Mathias on November 18, 2011, about her Order and assault; believing Ms. Mathias to be her friend and interested in helping her.

As for Ms. Hauer's judgment, even when she had dismissed her prior orders, Mr. Hauer never had access to the day care children.

⁴¹ *Id.*

The Department has failed to provide that there exist specific articulable facts or circumstances which provide a reasonable suspicion that there is any risk, let alone an imminent risk, of harm to the health, safety, or rights of persons served by the program.

M.E.M.