

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 Teresa Leona Weasler and
Catherine Ann Rohlik

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above matter came on for hearing before Administrative Law Judge M. Kevin Snell on November 20, 2012, at the Dakota County Judicial Center, 1560 Highway 55, Hastings, Minnesota 55033. The hearing record closed at the end of the hearing on November 20, 2012.

Margaret M. Horsch, Assistant Dakota County Attorney, Hastings, Minnesota, appeared at the hearing as attorney for the Minnesota Department of Human Services (the "Department") and the Dakota Social Services Department. Randall Smith, Attorney at Law, St. Paul, Minnesota, represented Co-Licensee Teresa Leona Weasler (Ms. Weasler) at the hearing. Catherine Ann Rohlik (Ms. Rohlik), Co-Licensee, did not appear at the hearing either in person or through counsel.

STATEMENT OF THE ISSUE

The issue is whether there is reasonable cause to believe that the health, safety or rights of children in Licensees' care are at imminent risk of harm at this time.

The Administrative Law Judge concludes that there is reasonable cause to believe that children in Licensees' care remain at imminent risk of harm, and the temporary immediate suspension of Licensees' family child care license should be continued.

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

FINDINGS OF FACT

1. Ms. Weasler was first licensed to provide family childcare services in Rosemount, Minnesota, in 1980.¹ On January 27, 2012, Ms. Catherine Rohlik, Ms. Weasler's 49-year-old niece, became a joint licensee, together and co-equal with

¹ Testimony of Teresa Leona Weasler; Test. of Maura Johnson, social worker for Dakota County (the "County") child care licensing unit; Exhibit 1.

Ms. Weasler. The current Class C-2 license permits the Licensees to care for up to 12 children.²

Licensees' History

2. Licensee Weasler has been cited for violations of day care rules in the past. Ms. Weasler has had no previous fines, disqualifications or suspensions. Ms. Weasler received superior scores on parent evaluations conducted by the County from 2004 to 2009.³

3. Ms. Weasler has diabetes, which has caused her problems with her vision due to blood spots in her eyes. During the second week in November 2012, Ms. Weasler saw her regular physician, who made an appointment for her with an eye specialist for 2:00 p.m. on November 7, 2012.⁴

4. Licensees permit smoking in the day care home outside of day care hours.⁵

5. Ms. Weasler allowed Ms. Rohlik to move in with her approximately two years ago because Ms. Weasler wanted to give Ms. Rohlik "a new start." Ms. Rohlik was from a small town and had been associating with people that "had some issues."⁶

6. Although Ms. Weasler does not allow alcohol in her day care home, she knew that Ms. Rohlik drank alcohol on the weekends. Ms. Rohlik had been convicted of driving while intoxicated ("DWI") within the last 10 years. Although Ms. Weasler did not know about Ms. Rohlik's DWI conviction, she had discussions with Ms. Rohlik about getting Ms. Rohlik into Alcoholics Anonymous or whatever treatment that she might need.⁷

November 6, 2012

7. During the evening of Tuesday, November 6, 2012, while at a friend's house, Ms. Rohlik drank shots of liquor until she was intoxicated. Her drinking continued until at least midnight.⁸

November 7, 2012

8. Ms. Weasler began caring for the day care children at 7:00 a.m. on November 7, 2012.⁹

² *Id.*; Ex. A.

³ Test. of M. Johnson; Ex. B.

⁴ Test. of T. Weasler.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

9. At 7:05 a.m., the Lakeville Police Department received an anonymous report that Ms. Rohlik was intoxicated and was driving to a day care home in Lakeville, Minnesota. After calling two other day care centers, Officer Stier matched the home address on Ms. Rohlik's driver's license to Licensees' day care home. Officers Stier and Hvinden were dispatched to locate Ms. Rohlik.¹⁰

10. Officer Hvinden located Ms. Rohlik's vehicle driving Northbound on Cedar Avenue and observed her weaving within the lane and crossing the centerline. After he activated his emergency lights, Officer Hvinden followed Ms. Rohlik for five blocks before she pulled over. By the time of the stop, Officer Stier had joined in the pursuit of Ms. Rohlik.¹¹

11. Officer Stier conducted the inquiry of Ms. Rohlik. When Officer Stier began talking with Ms. Rohlik, the smell of smoke in the vehicle initially blocked any other smells. Officer Stier informed her of Officer Hvinden's observations about her driving and the anonymous tip about her driving in an impaired condition.

12. Ms. Rohlik's eyes were bloodshot and watery and her speech was slightly slurred. She denied having consumed alcohol that day, stating that she had stopped drinking at midnight. As the smoke dissipated, Officer Stier sensed the smell of alcohol emanating from the vehicle. He then asked Ms. Rohlik to step out of the vehicle.¹²

13. After Ms. Rohlik was out of the vehicle, Officer Stier conducted three Standardized Field Sobriety Tests (SFSTs). Ms. Rohlik failed all three tests.¹³

14. Officer Stier then administered the Preliminary Breath Test ("PBT"). The final reading on the PBT was 0.162 breath alcohol concentration. Officer Stier then placed Ms. Rohlik under arrest.¹⁴

15. After determining that Ms. Rohlik had a DWI conviction within the previous 10 years, he confiscated the license plates on the vehicle, impounded the vehicle, and had it towed to an impound lot.¹⁵

16. After an 8:24 a.m. arrival at the police station, Officer Stier administered to Ms. Rohlik another breath test. The test revealed a 0.19 breath alcohol concentration.¹⁶

17. Officer Stier then:

- Issued a Notice and Order of Revocation of Ms. Rohlik's driver's license; and

¹⁰ Ex. 1.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

- Issued a Notice and Order of License Plate impoundment of Ms. Rohlik's vehicle; and
- Faxed his written report to County Social Services.¹⁷

18. Ms. Rohlik then called Ms. Weasler and told her she had been arrested and was in police custody for driving while intoxicated.¹⁸

19. Ms. Weasler then arranged with her neighbor, 88-year-old Annmarie Wages (a/k/a Peka), to watch the day care children while she went to pick up Ms. Rohlik from police custody. Ms. Weasler had used Ms. Wages previously as a substitute caregiver. Ms. Wages has not had a background study conducted by the Department as required by law.¹⁹ An employment background check had been conducted on Ms. Wages by the local school district, her former employer, which included a Minnesota Bureau of Criminal Apprehension ("BCA") check. The background check required by the Department is broader in scope than the school district's check.²⁰

20. Ms. Weasler left the day care children in Ms. Wages care at approximately 9:00 a.m. and drove to the police station. Ms. Rohlik was released into Ms. Weasler's custody. They returned to the day care residence at approximately 9:30 a.m. Ms. Weasler did not inquire of Ms. Rohlik regarding the level of Ms. Rohlik's intoxication. Ms. Weasler considered Ms. Rohlik emotionally distraught, but did not believe she was intoxicated.²¹

21. Ms. Weasler then arranged for a male friend to drive Ms. Rohlik to the impound lot so Ms. Rohlik could retrieve her vehicle. After her vehicle was released, Ms. Rohlik then drove her vehicle back to the day care residence, arriving at approximately 10:30 a.m.²²

22. Licensees both know and understand the prohibition against caring for children while intoxicated.²³

23. Between 10:30 a.m. and 1:30 p.m., the Licensees both cared for nine children, one of whom is Ms. Weasler's grandchild. The children ranged in age from one to five years old.²⁴

¹⁷ *Id.*

¹⁸ Test. of T. Weasler.

¹⁹ *Id.*; Test. of L. Haenke; Conclusions 9 and 13.

²⁰ *Id.*; Ex. C.

²¹ Test. of T. Weasler; Ex. 1.

²² Test. of T. Weasler.

²³ *Id.*; Ex. 1.

²⁴ *Id.*

24. At 1:30 p.m., Ms. Weasler left for her 2:00 p.m. eye appointment, leaving the care of all nine children in the care of Ms. Rohlik. Ms. Weasler's grandchild was picked up at 1:45 p.m.²⁵

County Investigation

25. After receiving Officer Stier's written police report, County Child Protection forwarded it to the Child Care Licensing Unit. A child care licenser and social worker reviewed the police report.²⁶

26. Between 2:45 p.m. and 3:00 p.m. on November 7, 2012, two County child care Licensors arrived, unannounced, at the Licensees' day care residence. Ms. Rohlik was alone and caring for the eight children. Ms. Rohlik advised the Licensors that Ms. Weasler was at a doctor's appointment.²⁷

27. One Licenser interviewed Ms. Rohlik and the other watched the children. Ms. Rohlik admitted that she had been drinking shots of liquor the evening before and that she "cannot handle shots." Ms. Rohlik stated that she was going to do some "AA" or some "outpatient" treatment in the future, and that she had been considering such treatment previously. Both Licensors noticed the heavy smell of smoke in the day care area of the home. Ms. Rohlik acknowledged that Ms. Weasler does not allow smoking during day care hours. However, Ms. Rohlik neither admitted nor denied that she had been smoking in the day care home that day. There was no smoking notice posted.²⁸

28. At 3:35 p.m., the Licenser interviewing Ms. Rohlik called Ms. Weasler on her cell phone and left a message. Ms. Weasler called back at 3:40 p.m., and advised the Licenser that she should be home in about 10 to 15 minutes. Ms. Weasler stated that she had given Ms. Rohlik the chemical use policy and that there had been no previous instances of Ms. Rohlik caring for children while intoxicated. She further stated that she had no concerns regarding Ms. Rohlik's use of alcohol.²⁹

29. The Licenser that was caring for the children observed that a gate separating the day care area from stairs going to the upper level of the home was not in place. She also saw a two-year-old girl go up the stairs and had to go and retrieve the child from the unlicensed area.³⁰

30. During the Licenser's visit, two parents came to the residence and picked up their four children, including the two-year-old girl that had gone up the stairs.³¹

²⁵ *Id.*; Ex. 2.

²⁶ Ex. 2; Test. of L. Haenke.

²⁷ Test. of L. Haenke; Ex. 1.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Ex. 1; Test. of L. Haenke.

³¹ *Id.*

31. The Licensors departed the day care home at 3:50 p.m., minutes before Ms. Weasler returned. The Licensors consulted with a supervisor and an Assistant County Attorney upon their return to County offices.³²

Additional Findings

32. Three parents, representing five of the day care children, have expressed their support for, and confidence in Ms. Weasler as a day care provider. None of the parents knew the level of Ms. Rohlik's intoxication prior to listening to the testimony at the hearing.³³

Procedural Findings

33. On November 8, 2012, Dakota County Human Services Department recommended to the Department that Licensees' child care license be temporarily immediately suspended.³⁴

34. The Department issued an order of temporary immediate suspension on November 8, 2012, and it was served on Licensee that same day.³⁵

35. Licensee filed a timely appeal from the order of temporary immediate suspension and requested an appeal hearing pursuant to Minn. Stat. § 245A.07, subd. 2a.³⁶

36. On November 13, 2012, the Department executed a Notice of and Order for Hearing, scheduling a contested case hearing on November 20, 2012.³⁷

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

CONCLUSIONS

Jurisdiction

1. The Administrative Law Judge and the Commissioner of Human Services have authority to consider and rule on the issues in this contested case proceeding pursuant to Minn. Stat. §§ 14.50 and 245A.08.³⁸

2. The Department gave proper and timely notice of the hearing and has fulfilled all procedural requirements of law and rule.

³² Test. of L. Haenke and T. Weasler.

³³ Test of James Caylor, Erin Rasmussen, and Jennifer Velde.

³⁴ Ex. 1, Test. of L. Haenke.

³⁵ Ex. 2, Test. of L. Haenke.

³⁶ Notice and Order for Hearing.

³⁷ *Id.*

³⁸ Minnesota Statutes are cited to the 2012 Edition.

Temporary Immediate Suspension Standards and Reasonable Cause

3. Minn. Stat. § 245A.07, subd. 2. provides, in applicable part:

If 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, the commissioner shall act immediately to temporarily suspend the license.

Burden of Proof

4. In order to maintain a temporary immediate suspension under Minn. Stat. § 245A.07, subd. 2, the Department must show that reasonable cause exists to believe that Licensee's failure to comply with applicable law or rule or the actions of other individuals, poses a current imminent risk of harm to the health, safety, or rights of persons served by her.

5. "Reasonable cause" for the purpose of a temporary immediate suspension means:

there exist specific articulable facts or circumstances which provide the commissioner with a reasonable suspicion that there is an imminent risk of harm to the health, safety, or rights of persons served by the program.³⁹

Relevant Statutes and Regulations

6. The purpose of family child care licensure statutes and rules is to ensure that minimum levels of care and service are given and to protect the care, health and safety of children.⁴⁰

7. Minnesota Statutes § 245A.07, subd. 1 (d) provides in applicable part:

. . . closure of a license by the license holder prior to the completion of any investigation will not preclude the commissioner from issuing a licensing sanction under this section, section 245A.06, or 245A.08 at the conclusion of the investigation.

8. Minn. Stat. §169A.20 regarding driving while impaired, provides as follows in relevant part:

Subdivision 1. **Driving while impaired crime; motor vehicle.** It is a crime for any person to drive, operate, or be in physical control of any motor vehicle . . . within this state . . . when:

³⁹ *Id.*

⁴⁰ Minn. Stat. § 245A.07, subd. 1; Minn. R. 9502.0325. Minnesota Rules are cited to the 2011 Edition.

(1) the person is under the influence of alcohol;

. . .

(5) the person's alcohol concentration at the time, or as measured within two hours of the time, of driving, operating, or being in physical control of the motor vehicle is 0.08 or more;

Family Child Care Law and Rules Alleged to Have Been Violated

Background Studies Required for Caregivers

9. Minn. Stat. § 245C.03, subd. 1(2), requires that background studies be conducted regarding any individuals that may have access to children when the commissioner has reasonable cause to do so. Minn. Stat. § 245C.04, subd. 1(d), requires that all license holders submit to the Commissioner completed background forms before anyone may have the opportunity for direct contact with daycare children.

Chemical and Alcohol Use Prohibited

10. Minn. Stat. § 245A.04, subd. 1 provides in relevant part:

(c) An applicant or license holder must have a policy that prohibits license holders, employees, subcontractors, and volunteers, when directly responsible for persons served by the program, from abusing prescription medication or being in any manner under the influence of a chemical that impairs the individual's ability to provide services or care. The license holder must train employees, subcontractors, and volunteers about the program's drug and alcohol policy.

11. Minn. R. 9502.0335, subp. 6. **Disqualification factors**, provides in relevant part:

. . . the license shall be revoked, not renewed, or suspended if the . . . provider, or any other person living in the day care residence or present during the hours children are in care, or working with children:

A. Abuses . . . alcohol, to the extent that the use or abuse has or may have a negative effect on the ability of the provider to give care or is apparent during the hours children are in care. Caregivers who have abused . . . alcohol, such that the use, abuse, or dependency has had a negative effect on the ability to give care, was apparent during the hours children are in care, or required treatment or therapy, must have 12 months of verified abstinence before licensure.

Smoking Prohibited

12. Minn. Stat. § 144.414, prohibiting smoking in certain places, provides, in relevant part, as follows:

Subd. 2. **Day care premises.** Smoking is prohibited in a day care center licensed under Minnesota Rules, parts 9503.0005 to 9503.0175, or in a family home or in a group family day care provider home licensed under Minnesota Rules, parts 9502.0300 to 9502.0445, during its hours of operation. The proprietor of a family home or group family day care provider must disclose to parents or guardians of children cared for on the premises if the proprietor permits smoking outside of its hours of operation. Disclosure must include posting on the premises a conspicuous written notice and orally informing parents or guardians.

13. Minn. R. part 9502.0425, Subp. 19 provides:

1) **Smoking prohibited in group family child care home.** Pursuant to Minnesota Statutes, section 144.414, subdivision 2, smoking is prohibited in a group family child care provider's home during hours of operation.

Violations Found by the Administrative Law Judge to Have Occurred

14. The Department demonstrated reasonable cause to believe that the Licensees violated Minn. Stat. § 245C.03, subd. 1(3), because they failed to request that a background study be completed on Ms. Weasler's neighbor before utilizing her as a caregiver on November 7, 2012, and before.

15. The Department demonstrated reasonable cause to believe that the Licensees violated Minn. Stat. § 245A.04, subd. 1, on November 7, 2012, because Ms. Rohlik began caring for day care children within two hours of having a .19 blood alcohol level, more than twice the legal limit for driving a motor vehicle.

16. The Department demonstrated reasonable cause to believe that the Licensees violated Minn. R. 9502.0335, subp. 6, because of Ms. Rohlik's intoxicated state on November 7, 2007 may have impaired her ability to give care to children.

17. The Department has demonstrated reasonable cause exists to believe that Licensees violated Minn. Stat. § 144.414 and Minn. R. 9502.0425, subp. 19, because the statutory notice was not posted and Ms. Rohlik may have been smoking in the day care home on November 7, 2012.

18. The Department has demonstrated reasonable cause exists to believe that children in Licensees' care remain at imminent risk of harm, and therefore the immediate suspension of Licensees' daycare license should remain in effect.

19. These Conclusions are reached for the reasons set forth in the Memorandum below, which is hereby incorporated by reference into these Conclusions.

20. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions, and as Findings any Conclusions that are more appropriately described as Findings.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

Based upon these Conclusions, the Administrative Law Judge recommends to the Commissioner of Human Services that:

The temporary immediate suspension of the family day care license of the Licensees should be AFFIRMED.

Dated: December 5, 2012

s/M. Kevin Snell

M. KEVIN SNELL
Administrative Law Judge

Reported: Digitally recorded; transcript prepared.

NOTICES

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 will 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 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

Burden and Standard of Proof

It is important to understand that, at this stage, the Commissioner is not required to prove that the alleged incidents actually occurred. At this stage, the Commissioner of Human Services must demonstrate the existence of articulable facts sufficient to warrant a cautious person to reasonably suspect that either Licensee poses an imminent risk of harm to the health, safety or rights of children in care. This is a modest standard, intended to insure that vulnerable children are protected until there can be a full hearing and final determination on the underlying circumstances or charges.

During an expedited hearing regarding a temporary immediate suspension (“TIS”), the State must only present reliable oral testimony and/or reliable documentary evidence in support of a finding of reasonable cause. The function of the Administrative Law Judge at this stage of the process is not to assess the relative credibility of all conflicting testimony, but rather it is to determine whether there is enough evidence to provide a reasonable, prudent person to suspect that children in Licensees’ care remain at imminent risk of harm.

Articulable Facts That Establish a Reasonable Suspicion of an Imminent Risk of Harm

It is not necessary to resolve conflicting evidence or all questions of witness credibility in the context of an expedited hearing on a temporary immediate suspension. At this stage of the proceedings, the Department does not need to conclusively establish that all of the factual allegations upon which it relied in support of the temporary immediate suspension actually did or did not occur. For example, in this case the ALJ is not required to resolve the disputed fact of whether Ms. Rohlik does or does not live at the day care home at the present time. Ms. Weasler testified that Ms. Rohlik moved out in July 2012. It is sufficient for this proceeding that there is evidence to suggest that she still lives in the day care residence, because the residence address listed on Ms. Rohlik’s drivers’ license is the day care residence.⁴¹ No documentary evidence suggests that she resides elsewhere. These facts are sufficient to allow a reasonable, prudent person to suspect that Ms. Rohlik resides in the day care home. Where Ms. Rohlik actually resides is a factual determination for a future licensing proceeding. If the Department decides to impose additional licensing sanctions, the Licensees will have the right to a full evidentiary hearing, and the question of whether the facts alleged by the Department occurred may be fully explored in the context of that hearing.

Even though there may not be a court order precluding Ms. Rohlik from returning to the day care residence and having contact with children, she would still have the legal right to return to care for children in Ms. Weasler’s home in the event the temporary immediate suspension is lifted. Ms. Weasler testified that she would not

⁴¹ Finding 7.

allow Ms. Rohlik to do so. However, there is no evidence that Ms. Weasler has taken steps to secure an order of protection which could legally prevent her return. Finally, there is no evidence that Ms. Weasler has changed the locks to the day care home or secured Ms. Rohlik's keys to the residence.

In addition, there is no evidence in the record that Ms. Rohlik has or will offer to surrender her rights under the joint license with Ms. Weasler. Such a surrender would require an acceptance by the Department.⁴² There is no evidence in the record to suggest that the Department would accept such a surrender.

The continuing risk that Ms. Rohlik could expose day care children to an imminent risk of harm due to her alcohol abuse, together with another series of poor judgments related to Ms. Weasler's individual supervision failures as occurred on November 7, 2012, all combine to weigh against a determination of lack of reasonable cause. The evidence suggests that there remains an articulable and quantifiable risk of harm. Although not present in this case, actual harm is not required in temporary immediate suspension situations.

When the evidence offered by the Commissioner is reviewed in light of the modest "reasonable cause" standard of proof, the ALJ finds that the evidence is sufficient to establish reasonable cause to continue the temporary immediate suspension. Based on the articulable facts contained in the record, a cautious person would suspect that an imminent risk of harm remains. All of these factors rise to pose a continuing imminent risk of harm requiring a continuation of the temporary suspension as long as Ms. Weasler operates a day care under a joint license with Ms. Rohlik in Ms. Weasler's home. The result in this matter is unfortunate for Ms. Weasler, but the license is still a joint license. Violations and risk attributable to Ms. Rohlik alone are attributable to Ms. Weasler. For the forgoing reasons the Administrative Law Judge finds that the Commissioner does, at this time, have reasonable cause to continue the suspension.

M. K. S.

⁴² Conclusions 4 and 5.