

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Revocation of the
Family Child Care License of La Vera
Ashanti

**ORDER DENYING RESPONDENT'S
MOTION FOR DEFAULT JUDGMENT**

This matter came before Administrative Law Judge James E. LaFave on Respondent's Motion to Quash and Notice of Default Judgment filed on January 15, 2014. The Department of Human Services filed a Response on January 27, 2014.

La Vera Ashanti, Respondent, appeared on her own behalf and without counsel. Nathanael Holloman, Respondent's son, also appeared on behalf of his mother. Robert B. Roche, Assistant County Attorney, appeared on behalf of the Minnesota Department of Human Services (Department) and the Ramsey County Human Services Department (County).

STATEMENT OF THE ISSUE

Minn. R. 1400.8560 requires that an administrative law judge recommend a hearing be dismissed with prejudice if the licensee appears at a hearing and the Department fails to appear.¹ At the tenth prehearing conference in this matter Ms. Ashanti appeared and the Department did not. Does Minnesota law mandate the Administrative Law Judge recommended dismissal when the Department failed to appear at a prehearing conference?

SUMMARY OF CONCLUSIONS

Because the Department failed to appear at a prehearing conference, as opposed to a hearing, a recommendation of dismissal is not required and Respondent's motion is denied.

¹ Minn. R. 1400.8560 ("A default occurs when a party fails to appear without the prior consent of the judge at a prehearing conference, settlement conference, or a hearing.... If the party against whom the agency intends to take action appears at a hearing, but the agency fails to appear, the administrative law judge shall recommend that the hearing be dismissed with prejudice").

NOW, THEREFORE, based upon the file, record, and proceedings herein, and for the reasons set forth in the accompanying Memorandum,

IT IS HEREBY ORDERED:

1. The Respondent's Motion to Quash and Notice of Motion for Default is **DENIED.**
2. A prehearing conference will be held by telephone on **Monday, February 24, 2014, at 11:00 a.m.** to review the status of the case, define the issues and set the dates for hearing. At that time please call **1-888-742-5095** and when prompted enter conference code **249 440 7275#.**

Dated: February 24, 2014

s/James E. LaFAve

JAMES E. LAFAVE

Administrative Law Judge

MEMORANDUM

Background

Respondent's license to provide family child care in the state of Minnesota was revoked effective February 2, 2012. Since Respondent's timely appeal of the Department's order of revocation, ten prehearing conferences have been held. The ten prehearing conferences were held on:

- January 31, 2013;
- March 11, 2013;
- April 10, 2013;
- May 30, 2013;
- July 1, 2013;
- August 6, 2013;
- September 6, 2013;
- October 14, 2013;
- December 9, 2013; and
- January 3, 2014.

With the exception of the prehearing conference held on December 9, 2013, Robert B. Roche, Assistant County Attorney, has appeared on behalf of the Department at each prehearing conference. At each prehearing conference, Respondent appeared on her own behalf accompanied by her son, Nathanael Holloman, and without counsel.

The reason for ten prehearing conferences is that Respondent's other son, Jesse David Holloman, faces criminal charges arising out of facts related to this case. Respondent's former attorney asserted that documents, which are a part of Mr. Holloman's criminal case, could be useful to Respondent in this licensing matter. This Tribunal was told the documents would become available upon the conclusion of Mr. Holloman's criminal case. As of January 3, 2014, the criminal case had not been resolved.

At each prehearing conference, the parties conferred by telephone to update the Administrative Law Judge on the status of the criminal proceedings against Jesse David Holloman. Over the course of one year and numerous prehearing conferences, the parties have agreed to continue this matter to give Respondent the opportunity to obtain documents which may assist her in the defense of this case.

On December 9, 2013, Respondent appeared by telephone and was ready to proceed with the prehearing conference. No one appeared on behalf of the Department. The Department did not obtain the Administrative Law Judge's prior consent to be absent from this telephone prehearing conference. It marked the ninth prehearing conference held in this licensing matter.

On January 15, 2014, Respondent filed a "Motion to Quash and Notice of Default Judgment" based upon the failure of the agency to appear at the December 9, 2013, prehearing conference.² Respondent seeks a recommendation of dismissal with prejudice pursuant to Minn. R. 1400.8560.³

The Department filed a response to Respondent's Motion on January 24, 2014.⁴ The Department contends the mandatory recommendation of dismissal with prejudice is inapplicable because the rule in question only applies to instances in which the agency fails to appear at a hearing. The Department argues that a hearing has not been scheduled in this case; the proceeding in which the Department failed to appear was a prehearing conference, which is to be differentiated from a hearing and therefore a recommendation of dismissal with prejudice is not required.⁵

Minn. R. 1400.8560 - Default

In accordance of Minn. Stat. § 245A.07, subd 3(b), this case is governed by the Revenue Recapture Rules.⁶ Under Minn. R. 1400.8560, "[a] default occurs when a party fails to appear without prior consent of the judge at a prehearing conference,

² See, Motion to Quash and Affidavit of Fact/Notice of Default Judgment (January 14, 2014).

³ *Id.*

⁴ See, Response to Appellant's Motion to Quash (January 24, 2014).

⁵ *Id.* ("...the 'shall' language on which Appellant replies (sic) applies only when a party fails to appear at a hearing. Prehearing conferences, settlement conferences, and hearings are not the same thing") (January 24, 2014).

⁶ Minn. Stat. § 245A.07, subd 3(b) ("If the license was suspended or revoked, the notice must inform the license holder of the right to a contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612").

settlement conference, or hearing.”⁷ The rule goes on to state, “If the party against whom the agency intends to action appears at a hearing, but the agency fails to appear, the administrative law judge shall recommend that the hearing be dismissed with prejudice.”⁸

Discussion

There is a difference between a “hearing” and a “prehearing conference” and that difference is reflected in the rules. A prehearing conference occurs prior to a hearing, serves the purpose of simplifying the issues to be determined at the hearing, may result in settlement of the case, and is an informal proceeding.⁹ Further support of the distinction between a prehearing conference, settlement conference and hearing can be found in Minn. R. 1400.8603 “Conduct of Hearing,” which establishes a more formal process under which hearings shall be conducted.

Minn. R. 1400.8560 also recognizes the difference between a “hearing” and “prehearing conference.” The first sentence of Minn. R. 1400.8560, in defining when a default occurs, makes reference to “prehearing conferences,” “settlement conferences” and “hearings.”¹⁰ Notably, in the sentences that follow, especially the sentence requiring the administrative law judge to recommend dismissal with prejudice, only “hearing” is listed.¹¹ There is no reference to “prehearing conferences” or settlement conferences.¹² The Administrative Law Judge agrees with the Department’s contention that “[p]rehearing conferences, settlement conferences and hearings are not the same thing.”¹³

The Department was in default when it failed to appear at a prehearing conference on December 9, 2013, but dismissal is not required under Minn. R. 1400.8560 because the default did not occur at a hearing. Moreover, as the record indicates, the parties have held many prehearing conferences while awaiting the resolution of the criminal charges against Jesse David Holloman. The criminal charges against Mr. Holloman had not been resolved as of January 3, 2014. The Respondent was therefore not harmed or prejudiced by the Department’s failure to appear on December 9, 2013.

Since the Department failed to appear at a prehearing conference as opposed to a hearing, the mandatory recommendation of dismissal with prejudice set forth in Minn.

⁷ Minn. R. 1400.8560, *supra* note 1 (emphasis added).

⁸ *Id.*

⁹ Minn. R. 1400.8580 (“The administrative law judge shall hold a prehearing conference prior to the hearing.... The purpose of the prehearing conference is to simplify the issues to be determined at the hearing ... and, if possible, to reach a settlement without the necessity for further hearing. A prehearing conference shall be an informal proceeding ...”).

¹⁰ Minn. R. 1400.8560.

¹¹ *Id.*

¹² *Id.*

¹³ Response to Appellant’s Motion to Quash, *supra* note 15 at 3.

R. 1400.8560 does not apply. Also, Respondent has not been damaged or prejudiced by the Department's default. Respondent's Motion is therefore denied.

J. E. L.