

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 Catina
Walker and the Maltreatment
Determination and Disqualification of
Catina Walker

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

This matter came on for hearing before Administrative Law Judge Cheryl LeClair-Sommer on June 9, 2014, at the Human Services Building, 525 Portland Avenue, Minneapolis, Minnesota. The hearing record closed on June 24, 2014, with the receipt of post-hearing submissions.

Frederic Stephens, Assistant Hennepin County Attorney, appeared on behalf of the Minnesota Department of Human Services, (Department) and Hennepin County Human Services and Public Health Department (County). Jon Geffen, Arneson & Geffen, PLLC, appeared on behalf of Catina Walker (Respondent).

STATEMENT OF THE ISSUES

1. Whether the preponderance of the evidence supports the October 25, 2013, finding of serious and recurring maltreatment of children in her care, resulting in disqualification from contact with persons served in licensed programs?
2. If so, whether the Respondent has demonstrated that she does not pose a risk of harm to children in her child care so as to set aside the disqualification of the Respondent?
3. Whether the Department has shown reasonable cause that the license holder failed to comply with applicable laws and rules for the Department to take action against Respondent's child care license?
4. If so, has the Respondent shown by a preponderance of the evidence that she is in full compliance with the statutes and rules governing her child care so as to rescind the revocation of the license?
5. If not, does the record provide a sufficient basis for taking adverse action against the Respondent's child care license?

6. If so, what sanction is appropriate based on the nature, chronicity, and severity of the violations, or required under appropriate statute?

SUMMARY OF RECOMMENDATION

The Administrative Law Judge concludes that the Department has established by a preponderance of the evidence that reasonable cause exists for the revocation of Respondent's child care license. Respondent failed to demonstrate by a preponderance of the evidence that she was in full compliance with the laws and rules that the Commissioner alleges she violated, at the time the Commissioner alleges the violations of law or rules occurred. Accordingly, it is respectfully recommended that the Order for Revocation of Respondent's family child care license be **AFFIRMED**. It is further recommended that Respondent's disqualification from contact with persons served in licensed programs be **AFFIRMED**.

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

FINDINGS OF FACT

1. Catina Walker has operated a family child care business out of her home in Minneapolis, Minnesota, for fifteen years.

2. Respondent keeps three dogs and one cat in her home. Respondent's stated practice is to kennel her dogs and keep her cat in her bedroom when the child care children are present in the home.¹ On January 19, 2007, Respondent received a phone call from her fourth-grade son's teacher reporting problematic classroom behaviors.² Accompanied by the nine children for whom she was providing child care that day, Respondent drove her van to the school conference during child care hours.³ Respondent took all but one child care child with her into the school, spoke to her son, and then spoke to her son's teacher. While speaking to the teacher, the principal of the school called the teacher informing her that a child had been found. A school staff person found one child care child unsupervised in the parking lot of the school. The child wore an open coat and no gloves or hat. The temperature at that time was approximately 0° F. Another school staffer noted that the van lacked car seats for small children. Upon receiving the report of the found child from the school staff person, the school principal informed the teacher that an unsupervised child had been found. Respondent acknowledged that the child was one of the child care children in her care.⁴

¹ Testimony (Test.) of Respondent.

² Ex. 9, Attachment R.

³ Ex. 9, Attachment R.

⁴ *Id.*, p. 4.

4. The County initiated a child protection investigation.⁵ The investigation resulted in a determination of maltreatment based on neglect related to Respondent's failure to supervise a child care child on January 19, 2007.

5. On January 26, 2007, the Department issued an Order of Temporary Immediate Suspension to Respondent based upon the January 19, 2007 incident.⁶ The Respondent timely appealed the temporary immediate suspension of the license to provide family child care.

6. The Respondent and the County entered into a Settlement Agreement on March 8, 2007. As part of the terms of the Settlement Agreement, the Respondent acknowledged "that the maltreatment finding is conclusive under Minnesota Statutes, section 245C.29." Respondent further agreed to:

- fully comply with all Minnesota laws and rules applicable to her family child care license;
- comply fully with child/adult ratios, age distribution, and capacity requirements;
- always have an additional caregiver present when she leaves her home with children participating in her child care;
- abide by the safety recommendations described during training regarding the transportation of children;
- ensure that all children in her care have appropriate car seats and/or seat belts, as needed (when being transported);
- to schedule personal appointments during non-child care hours;
- obtain additional training in the areas of safety and supervision within four months of the agreement; follow the plan submitted to Hennepin County in February of 2007 outlining how all children in her care will be closely supervised;
- provide a copy of the agreement to current and future parents (with time limitations and compliance documentation);
- pay half of the \$1,000 fine, with payment of the other half of the fine stayed provided Ms. Walker abides by the remaining terms of the agreement; and
- post the Settlement Agreement in a conspicuous place in her licensed child care home.⁷

⁵ Ex. 9, Attachments A, B, and H.

⁶ The original Order for Temporary Immediate Suspension was dated January 25, 2007, but could not be properly served, according to Ex. 9, Attachment F. A new Order for Temporary Immediate Suspension was dated January 26, 2007.

⁷ Ex. 9, Attachment E, p. 1-4.

7. On December 20, 2007, a scheduled licensing visit resulted in the County issuing a Correction Order for the following violations: failure to post earlier Correction Orders; missing documentation for a drug and alcohol policy; an unsafe door in the basement; and failure to keep hazardous household items inaccessible from children in her care.⁸ The licensing sanction was modified to a conditional license and a \$1,000 fine (\$500 stayed).

8. On December 10, 2008, an unannounced relicensing visit to Respondent's child care resulted in the County issuing a Correction Order for the following violations: notice of no insurance to parent missing for C-1 and C-5; missing immunization record for C-2; missing immunization update for C-3 and C-4; missing admission and arrangements form for C-5; missing travel and activities form for C-5; missing monthly crib safety checklist and annual recall for one playpen/crib; missing current vaccination for one cat; missing gate on deck stairs, cat food and water dishes accessible to children in care; dismantled crib in children's play area in basement accessible to children in care; S-2 has not viewed annual shaken baby video; dog excrement in backyard leading to play area accessible to children in care; missing background studies for S-3 and S-4; toxic and hazardous items were removed during the visit; and missing verification of alcohol and drug policy for S-1 and S-2.⁹ The Correction Plan was returned on December 17, 2008 by the Respondent.¹⁰

9. The Respondent was reminded by Shawn Wilde, Licensing Worker, on December 10, 2008, that the Respondent needed to write up a safety plan for the dog Ladi who had been registered by the city of Minneapolis as a dangerous dog.¹¹

10. Following a scheduled licensing visit on December 4, 2009, the County issued a Correction Order for the following violations: failure to post emergency information; use of an extension cord for a refrigerator; and a missing guard rail on steps.¹²

11. A scheduled renewal visit on December 3, 2010 resulted in the issuance of another Correction Order for the following violations: missing documentation regarding children in care; and the absence of a bathroom unlocking device.¹³

12. In April 2012, Respondent had a 17-month-old child (Child 1) in her child care. Child 1 had exhibited symptoms of pink eye and been placed on an antibiotic by a physician. On April 17, 2012, at 8:45 a.m., a parent dropped Child 1 off at Respondent's child care. At about 10:30 a.m., Respondent noticed that Child 1 exhibited multiple scratches and small puncture wounds on the lower left leg. Respondent contacted Child 1's parent and reported Child 1's condition. The parent picked up the child and took Child 1 to Urgent Care for examination by a physician. The physician attributed Child 1's

⁸ Ex. 9, Attachment H.

⁹ Ex. 9, Attachments I and J.

¹⁰ Ex. 9, Attachment I.

¹¹ Ex. 9, Attachment I.

¹² Ex. 9, Attachment L.

¹³ Ex. 9, Attachment N.

injuries to having been bitten or scratched by a cat. Child 1's parent subsequently withdrew Child 1 from Respondent's child care.¹⁴

13. Respondent notified the County on April 19, 2012, that an incident had occurred on April 17, 2012. Respondent reported that Child 1 had, in the days prior to the incident, arrived at the child care with a rash from a reaction to medications. She noted that Child 1 had scratches or a rash on her left leg/ankle on April 17, 2012.¹⁵ The physician who treated the child, according to the Respondent, reported that the scratches and open red blood pockets were the result of cat scratches and bites. The child returned to the child care for a short day on the 18th of April, 2012, and then was removed from the child care. Respondent signed a Provider Incident Report on April 21, 2012.

14. On April 19, 2012, after receiving Respondent's report of the April 17, 2012 incident, the County initiated an investigation and interviewed Respondent. Respondent maintained that Child 1 had experienced some type of skin condition described as a rash, perhaps related to a medication for pink eye. Respondent said she put ointment on the rash. Respondent acknowledged that she kept two dogs in the residence, one which had been recently the subject of a Potentially Dangerous Dog determination under city ordinance. Respondent noted that her cat was in the residence on April 17, 2012, but maintained that the cat was restricted to a bedroom and had no access to the children in child care.¹⁶

15. The County initiated a child protection investigation due to the report of the April 17, 2012 incident.

- a. The investigators interviewed the parent of a one-year-old child (Child 2) enrolled in Respondent's child care. Child 2's parent told the investigators that Child 2 came home from Respondent's child care with scratches on Child 2's face and hand. Child 2's parent related that Respondent attributed Child 2's injuries to barrettes in the children's hair. Child 2's parent expressed concern that the injuries arose from the cat in Respondent's child care, and also reported that Respondent was in the practice of running errands during child care hours and leaving the child care children in the care of Respondent's children, ages 19 and 16.
- b. The investigation revealed that another child in care, a one-year-old child (Child 3), had exhibited similar scratches and puncture wounds as those suffered by Child 1. A physician examined Child 3 and described the condition as abrasions.¹⁷
- c. At the time of the investigation, the Respondent had one cat and three dogs in the residence, including the dog recently returned to the home

¹⁴ Ex. 9, Attachment Q; Testimony of Loretta Huffman; and Test. of Respondent.

¹⁵ Attachment P, and Test. of Shawn Wilde.

¹⁶ *Id.*

¹⁷ Exs. 2 and 3, Test. of L. Huffman; Test. of Respondent; and Ex. 9, Attachment Q.

following its designation as a Potentially Dangerous Dog had been rescinded, according to Respondent. Loretta Huffman, CP Worker, was unaware that this dog had returned to the home. The Respondent maintained that the dogs were kenneled during the day and the declawed, older cat was secluded in another room of the house away from the children.¹⁸

16. On May 30, 2012, Respondent sent a letter to the County. Respondent maintained that: Child 1's condition consisted of a medication reaction; the condition was present when Child 1 was dropped off that morning; and that Respondent's cat was declawed. Respondent asserted that she had consulted physicians with pictures of the affected children and had been told that only blood tests could determine if there was some common cause to the other symptoms originating from Child 1. Respondent maintained that the scratches on one of the other children had "come on" after that child had left Respondent's child care for the day.¹⁹

17. On June 11, 2012, the County concluded its licensing investigation arising out of the April 19, 2012 complaint. The County determined that Respondent provided inadequate supervision of Child 1, Child 2, and Child 3 in violation of Minn. R. 9502.0315, subp. 29a. The County issued a Correction Order documenting this finding.²⁰

18. On July 3, 2012, Respondent requested a hearing for reconsideration of the maltreatment determination.²¹

19. On October 1, 2012, the County recommended that the Department revoke Respondent's child care license due to the finding of maltreatment based upon the 2007 and 2012 findings of neglect.²²

20. On November 29, 2012, the County conducted a license renewal visit to Respondent's child care. No health or safety problems were observed. Based on conditions observed, the County issued a Correction Order identifying missing documentation in the following four areas: missing parent signature on provider policy for one family; missing travel and activities form for C-1; missing crib inspection forms and annual documentation for three new wooden portable cribs; and missing verification of new fire extinguisher.²³

21. In a letter dated October 25, 2013, issued as a replacement for the August 7, 2012 notice, the County notified Respondent that Respondent was found

¹⁸ Test. of S. Wilde and Ex. 9, Attachment Q.

¹⁹ Ex. 5.

²⁰ Ex. 6.

²¹ Ex. 7.

²² Ex. 8.

²³ Exs. 10 and 11. The December 31, 2012 letter (Ex. 12) explained that due to a change in statute, licenses were changed to two years in length with some exceptions that warranted a one-year license. Due to the April 2012 supervision complaint and the pending negative action, only a one-year license at the next renewal was warranted for the Respondent's child care license.

responsible for serious and recurring maltreatment based on a finding of neglect, and that Respondent was disqualified from any position allowing direct contact with, or access to, persons served by DHS-licensed programs. Respondent was also notified that her request for reconsideration to Hennepin County was denied and that Respondent had a right to request a fair hearing regarding the maltreatment and disqualification determinations.²⁴

22. On January 24, 2014, the County conducted a license renewal visit to Respondent's child care. No health or safety problems were observed. Based on conditions observed, the County issued a Correction Order identifying missing documentation in three different areas: a missing grievance policy for one family; a missing provider policy for one family; and a missing crib inspection form and recall check for one pack and play.²⁵

23. On February 20, 2014, the Department issued an Order of Revocation that revoked Respondent's family child care license citing the following violations:

- 1) maltreatment by neglect of three children (Child 1, Child 2, and Child 3), two of whom required medical attention;
- 2) disqualification from contact with persons served by a licensed program due to serious and recurring maltreatment;
- 3) failure to provide required supervision to children in care who received unexplained injuries;
- 4) chronic violations of the statutes and rules governing family child care as documented in the 2008 through 2010 correction orders issued to Respondent;
- 5) repeated failure to provide all required documentation for children in care;
- 6) repeated failure to provide documentation of training for caregivers including SUID/AHT, first aid, and CPR;
- 7) failure to provide documentation of monthly crib safety inspections; and
- 8) repeated health and safety violations.²⁶

24. Respondent timely appealed the Order of Revocation and timely requested reconsideration of her disqualification.²⁷

²⁴ Ex. 17.

²⁵ Exs. 13 and 14.

²⁶ Ex. 15.

²⁷ Ex. 16.

25. At hearing, Respondent testified that Child 1's condition on April 17, 2012, was in the nature of a rash or blood blisters, and that these changed over the period of the day. Respondent's description of Child 1's condition differs from that of the medical report from the physician who examined Child 1 on the same day.

26. Respondent testified that Child 2 experienced one small scratch while in her care in mid-April 2012, which Respondent attributed to Child 2's barrettes. Respondent's description differs from the report of the parent of Child 2, who indicated that Child 2 had scratches "all over her face and on her hand." The investigator observed the injuries and described them as "small nick like marks located on the back of her head and behind her left ear." The investigator also related the statement of Child 2's parent that Child 2 had small scratches on her forehead and hand which had healed.²⁸

27. Respondent testified that Child 3 exhibited scratches near the end of the child care day. Respondent provided no reasonable explanation of how Child 3 came to exhibit abrasions on his leg. Respondent testified that the abrasions on Child 1 and Child 3 were blisters and pus due to some form of infectious agent and that the blisters spread throughout the day. She further testified that the scratches and blood on a child formed scabs as she viewed them. Respondent testified that she was not out of the sight of Child 1, Child 2, or Child 3 on the days on which the injuries occurred to each of those children. A high chair in which the children had been sitting was checked and no sharp edges were discovered.²⁹

28. Respondent testified as to the circumstances of the 2007 maltreatment finding. Respondent maintained that she had brought all of the children into the school with her and one child had been briefly left in the school office. She could not recall whether the child was found in the parking lot of the school.³⁰ Respondent's version of events is directly contradicted by all of the information provided by the school in the investigation following that incident.³¹

29. Three children sustained punctures and abrasions on or about April 17, 2012, while in the care of Respondent. Two children obtained medical attention. Respondent did not intervene to prevent injuries to Child 1, 2, or 3, which represents inadequate supervision of the children in her child care during the time when the children were present in the child care home.

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

²⁸ Testimony of Respondent.

²⁹ Testimony of Respondent.

³⁰ Testimony of Respondent.

³¹ See, e.g., Ex. 9, Attachment S, Huffman Collateral Contact Note, 1/26/2007 ("... just as she ended the phone conversation [Respondent] realized that she was missing a child and began gathering the other children to go look for the missing one").

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Commissioner have jurisdiction over this matter pursuant to Minn. Stat. §§14.50, 245A.08, and 245C.28.
2. The Department gave proper and timely notice of the hearing in this matter.
3. The Department has complied with all procedural requirements of law and rule.
4. This proceeding is a consolidated contested case hearing under Minn. Stat. § 245A.08, subd. 2a, addressing both Respondent's disqualification under Minn. Stat. § 245C.22 and the licensing sanction sought by the Department.
5. The Commissioner may suspend or revoke a license of a licensed child care provider who does not fully comply with applicable law or rule.³² When applying sanctions authorized under Minn. Stat. § 245A.07, the Commissioner shall consider the nature, chronicity, or severity of the violation of law or rule, and the effect of the violation on the health, safety, or rights of the children served by the child care program.³³
6. The burden of proof in an appeal of a revocation of a family child care license is initially on the Department to show, by a preponderance of the evidence, that there is a factual basis for the disciplinary action taken.³⁴
7. The Commissioner may demonstrate reasonable cause for action taken by submitting statements, reports, or affidavits to substantiate the allegations that the license holder failed to comply fully with applicable law or rule.³⁵
8. If the Commissioner demonstrates that reasonable cause existed, the burden of proof shifts to the license holder to demonstrate by a preponderance of the evidence that the license holder was in full compliance with those laws or rules that the Commissioner alleges the license holder violated, at the time that the Commissioner alleges the violations of law or rules occurred.³⁶
9. In April 2012, Respondent engaged in conduct that constitutes maltreatment by neglect by failing to properly supervise three children in her care so as to prevent those children from suffering otherwise unexplained injuries in the nature of scratches and small puncture wounds. This maltreatment is recurring, as Respondent committed maltreatment by neglect by failing to properly supervise a child in her care in January 2007. This conduct constituted a violation of Minn. Stat. § 245C.15, subd. 4(b)(2). Respondent's serious and recurring maltreatment constitutes a

³² Minn. Stat. § 245A.07, subds. 1 and 3 (2012).

³³ Minn. Stat. § 245A.07, subd. 1 (2012).

³⁴ Minn. R. 1400.7300, subp. 5 (2011).

³⁵ Minn. Stat. § 245A.08, subd. 3 (2012).

³⁶ *Id.*

disqualification from contact with persons served in licensed programs by operation of Minn. Stat. § 245C.14, subd. 1.

10. Respondent's disqualification has not been set aside by the Department at any time relevant to this proceeding. Respondent has not shown that she does not pose a risk of harm to children in the Respondent's child care. Respondent's disqualification should not be set aside. As a disqualified individual, whose disqualification has not been set aside nor has a variance been granted, Respondent cannot lawfully hold a family child care license.³⁷

11. The Department has demonstrated that: Respondent failed to supervise children in her care in April 2012; this conduct constituted maltreatment by neglect which was serious and recurring; Respondent is disqualified from contact with persons in licensed programs; and the disqualification is properly not set aside. Further, the 2007 maltreatment finding for lack of supervision along with the current finding of maltreatment by neglect for lack of supervision represent recurring and serious maltreatment to disqualify the Respondent from contact with persons in licensed programs.

12. Due to the recurring and serious incidents of maltreatment by lack of supervision, Respondent has not demonstrated that she does not pose a risk of harm to children in her child care so as to set aside the disqualification of the Respondent.

13. The Department has established, by a preponderance of the evidence, reasonable cause that the license holder failed to comply with applicable laws and rules for the Department to take action against Respondent's child care license.

14. Respondent has not shown by a preponderance of the evidence that she is in full compliance with the statutes and rules governing her child care so as to be entitled to rescission of the license revocation.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Administrative Law Judge makes the following:

³⁷ Minn. Stat. §§ 245A.05 and 245A.07.

RECOMMENDATION

The Commissioner's Order of Revocation of the family child care license is AFFIRMED and the disqualification of Catina Walker from contact with persons in licensed programs is AFFIRMED and not set aside.

Dated: August 28, 2014

s/Cheryl LeClair-Sommer

CHERYL LECLAIR-SOMMER
Administrative Law Judge

Reported: Digitally Recorded, No Transcript Prepared.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Human Services (the Commissioner) will make the final decision after a review of the record. Under Minn. Stat. § 14.61, the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten calendar days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Debra Schumacher, Administrative Law Attorney, P.O. Box 64998, St. Paul, MN 55164, (651) 431-4319 to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and Administrative Law Judge of the date the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline imposed.

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

MEMORANDUM

Maltreatment Determination

The Department's burden is to affirmatively prove some specific set of facts that shows Respondent failed in her obligation to supervise the children in her child care. The Department has shown that three different children suffered similar injuries, to

different parts of their bodies, over a brief period of time in Respondent's child care. The supervision standard required of family care providers states:

"Supervision" means a caregiver being 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.³⁸

The age of the three injured children required a caregiver to be within sight or hearing of the children. The nature of the injuries and the lack of any credible explanation how the injuries occurred supported the inference that no caregiver was within the sight or hearing of the three children at the time of their injuries.

Respondent has affirmatively testified that she was within sight and hearing of the children at all times relevant to the periods at issue. Respondent's testimony in that respect is not credible. Respondent consistently minimized her role and responsibility for the children in her care while shifting responsibility for failures of care to parents and others. On different occasions, she stated the injuries did not occur in her care, occurred prior to the children being dropped off, or occurred as a result of natural causes. Similar skin breaks occurred on three different children in the Respondent's care. The type of injuries, punctures and abrasions, suggests some sort of trauma; a physician described potential injuries by an animal. While it is unclear what mechanism of injury occurred, it is clear that the injuries occurred while in the care of the Respondent as a result of a lack of supervision.

Considering the prior Settlement Agreement in March of 2007 in which the Respondent acknowledged the maltreatment finding made against her by Hennepin County and the evidence of multiple instances of lack of supervision in the instant case, the evidence in the record supports the finding of recurring and serious maltreatment.

License Revocation

The evidence in the record supports the conclusion that Respondent's failure to supervise in 2012 is, considering the nature, severity, and chronicity of the violation along with the other failure to supervise in 2007 and the health and safety violations documented in Correction Orders from 2007, 2008, 2009 and 2010, sufficient to support the revocation of Respondent's child care license.

While evidence of Correction Orders after the Order for Revocation was offered and accepted into the record, those actions were not considered in this decision. The relevant query was whether the evidence showed a violation existed at the time that the Commissioner alleged the violations of law or rules occurred.

C. L. S.

³⁸ Minn. R. 9502.0335, subp. 29a.