OAH 5-1800-32532

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Order to Pay a Fine and Order of Conditional License of the Family Child Care License of Jamie L. Ahlberg	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION**

This matter came before Administrative Law Judge Jim Mortenson on August 27, 2015, for an evidentiary hearing. The hearing was held at the Office of Administrative Hearings, 600 Robert Street North, St. Paul, Minnesota. The hearing record closed on August 27, 2015.

Robert Roche, Assistant Ramsey County Attorney, appeared on behalf of the Department of Human Services (Department). Scott R. Johnson, Goetz & Eckland P.A., appeared on behalf of Jamie Ahlberg (Licensee).

STATEMENT OF THE ISSUE

Did the Department properly issue an Order to Pay a Fine and Conditional License to the Licensee on April 17, 2015?

SUMMARY OF RECOMMENDATION

The Department properly issued an Order to Pay a Fine and Conditional License to the Licensee.

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

FINDINGS OF FACT

1. Licensee opened her family day care as early as May 2011 at her home in Shoreview, without a license.[1] Licensee was notified by the County in writing, via letters dated May 31, 2011, and November 2, 2011, that a license was required to operate a child care program.[2]

2. Licensee filed an application for a license in May 2012, and was granted a Class A-Family Child Care License on October 24, 2012.[3]

---

[1] Exs. 105, 106, 107, 108; Testimony (Test.) of Jamie Ahlberg.
[2] Ex. 107.
[3] Exs. 101, 102.

3. The Class A license granted to Licensee permits a maximum of ten children between the ages six weeks through ten years. Of these children, only six may be under school age. Of those six, no more than three may be infants and toddlers. Of those three, no more than two may be infants.[4]

4. Licensee filed a Relicensing Application dated September 3, 2013.[5]

5. On November 1, 2013, Licensee was issued a Correction Order for five violations: failure to maintain complete Admission and Arrangement forms for eight children in care; failure to maintain complete Immunization Record forms for five children in care; failure to demonstrate provision of Chemical/Substance Abuse and Grievance Policies to five families of children in care; failure to maintain Permission to Administer forms for two children in care; and failure to maintain signed statements from nine parents regarding lack of liability coverage of $100,000 per person and $250,000 per occurrence.[6]

6. On or about September 25, 2014, the County received a complaint that Licensee was over-capacity because she had 18 children in her care.[7]

7. Sean Vang (Vang), a Family Child Care Licensor with the County, investigated the complaint about Licensee's day care on September 25, 2014.[8]

8. When Vang arrived at the Licensee's home, he identified himself to Licensee's spouse, Nick Ahlberg (Nick), who answered the door.[9]

9. Nick allowed Vang in and led him to the day care in the lower level of the home.[10] Vang spoke with Licensee and advised her he was investigating a complaint about the day care being over-capacity.[11]

10. Vang saw five children in the main room of the day care.[12] Vang inspected the records for the children and determined that all five were of preschool age, and one of them was an infant.[13]

11. Vang asked Licensee whether the children present were all of the children in her care and she responded that they were.[14]

---

[4] Ex. 101.
[5] Ex. 104.
[6] Exs. 103, 115.
[7] Test. of Sean Vang; Ex. 110.
[8] Test. of S. Vang.
[9] Test. of S. Vang.
[10] Test. of S. Vang; Test. of J. Ahlberg.
[11] Test. of S. Vang.
[12] Test. of S. Vang; Ex. 110.
[13] Test. of S. Vang; Ex. 110.
[14] Test. of S. Vang; Ex. 110.

12. Vang began to inspect the rest of the day care and discovered three additional infants sleeping in another room.[15]

13. Nick, who assists Licensee in the day care, advised Vang that it was their policy to "try out" potential new enrollees and that they also wanted to see if they could manage additional children before they applied for a Group (C3) license.[16]

14. Vang left and returned to the day care twice on September 25, 2014.[17] After consultation with County staff, he directed Licensee to have two of the infants removed from the day care, which was done early in the afternoon that day.[18]

15. On October 1, 2014, the County sent Licensee a Correction Order with three violations cited.[19] One violation was for having two too many children of preschool age and under given that there were eight children in the day care under preschool age. The second violation was for having two too many infants; there were four infants in the day care. The third violation was for failing to comply with applicable laws and rules, and providing the licensing worker false or misleading information when Licensee failed to disclose there were three infants in another room.[20]

16. On October 13, 2014, Nick contacted the County by telephone. He alleged that he and Licensee had applied for a Group (C3) license in January 2014, and that if they had the Group license, there would be no Correction Order.[21]

17. No record of such an application exists.

18. On November 12, 2014, the County received correspondence from Licensee stating that she was distracted during the September 25, 2014, licensing investigation, and did not intend to mislead Vang.[22] Licensee did not make any statements about a Group license or "trying out" children despite her licensed capacity.[23]

19. At hearing, Licensee testified that she advised Vang during the September 25, 2014, visit that she was aware of being over-capacity.[24]

20. The County recommended to the Department, in a letter dated December 3, 2014, that Licensee's family child care license be placed on conditional status for two

---

[15] Test. of S. Vang; Ex. 110.
[16] Test. of S. Vang; Ex. 110.
[17] Test. of S. Vang; Test. of J. Ahlberg.
[18] Test. of S. Vang; Exs. 110, 112.
[19] Ex. 111.
[20] *Id.*
[21] Ex. 116.
[22] Ex. 114.
[23] *Id.*
[24] Test. of J. Ahlberg.

years and a $200 fine be issued, based on the violations cited in the October 1, 2014, Correction Order.[25]

21. The Department ordered Licensee to pay a $200 fine and placed her license to provide family child care on conditional status for two years on or about April 17, 2015.[26]

22. The Department received Licensee's appeal of the Order to Pay a Fine and Order of Conditional License on April 29, 2015.[27]

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

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Commissioner of Human Services (Commissioner) have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 245A.07, .08 (2014).

2. The County and the Department provided the Licensee with adequate notice of the negative licensing action and Licensee timely appealed.

3. The Commissioner may impose a fine on a license holder if a license holder fails to comply fully with applicable laws or rules.[28] A "license holder shall forfeit $200 for each occurrence of a violation of law or rule governing matters of health, safety, or supervision, including but not limited to the provision of adequate staff-to-child or adult ratios[.]"[29]

4. "If the commissioner finds that the . . . license holder has failed to comply with an applicable law or rule and this failure does not imminently endanger the health, safety, or rights of the persons served by the program, the commissioner may issue a correction order and an order of conditional license to the . . . license holder."[30]

5. When issuing a conditional license or applying sanctions such as a fine, 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 persons served by the program.[31]

---

[25] Ex. 110.
[26] Ex. 109.
[27] Notice and Order for Prehearing Conference and Hearing, Ex. A.
[28] Minn. Stat. § 245A.07, subd. (3)(a)(1).
[29] Minn. Stat. § 245A.07, subd. (3)(c)(4).
[30] Minn. Stat. § 245A.06, subd. 1.
[31] Minn. Stat. §§ 245A.06, subd. 1, .07, subd. (1)(a) (2014).

6. The Commissioner has the burden of demonstrating there was reasonable cause to issue the sanction and conditional license.[32]

7. The Department has demonstrated reasonable cause to issue an Order to Pay a Fine of $200 and a Conditional License to Licensee. The Department has shown Licensee has not complied with applicable laws and rules. The Department has further established that the nature of the violations were severe enough to warrant the sanction and conditional license because the safety of children in Licensee's care were at risk until two of the infants were removed, and Licensee provided false or misleading information to the Licensing Worker (Vang) during his investigation into the complaint about Licensee being over-capacity. Further, the Licensee had previous licensing violations within the prior year.

8. Licensee has the burden of showing by a preponderance of the evidence that she was in full compliance with the laws and rules that the Commissioner alleges were violated, at the time that the Commissioner alleges the violations occurred.[33]

9. Licensee has not shown she was in compliance with the laws and rules the Commissioner alleges she violated. Licensee admits she was over-capacity with two more infants in her care than her license permitted. Licensee has not demonstrated she did not provide false or misleading information to Vang, the Licensing Worker investigating a complaint about Licensee being over-capacity when she failed to inform him about the presence of three additional infants in her care during a site visit.

Based upon the Findings of Fact, Conclusions of Law, record, and as explained in the Memorandum below, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge concludes that the Department has shown reasonable cause for its Order to Pay a Fine and Conditional License issued to Licensee on April 17, 2015. Licensee failed to show that she did not violate the law. Therefore, the Administrative Law Judge respectfully recommends that the Order to Pay a Fine and Conditional License be **AFFIRMED**.

Dated: September 8, 2015

s/Jim Mortenson

JIM MORTENSON
Administrative Law Judge

Reported: Digitally recorded.

[32] Minn. Stat. § 245A.08, subd. (3)(a).
[33] *Id.*

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 (2014), 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, PO 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 (2014). 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 (2014), 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

The Department carried the initial burden in this case to demonstrate reasonable cause for the Order to Pay a Fine and Conditional License to the Licensee. The Department met this burden.

The Licensee then had the opportunity to demonstrate, by a preponderance of the evidence, that she did not violate the law as alleged by the Department. Specifically, she had the burden to show that it was more likely than not that she was not over-capacity and that she did not provide false or misleading information to a licensing worker. The Licensee failed to meet this burden.

The Department issued Licensee an Order to pay a single fine of $200 for the two violations, rather than a fine for each violation. The Department also issued an Order of Conditional License for the two violations and Licensee's history of violations.

Licensee admitted she was over-capacity. She had two more infants in her care than permitted by her license. This is a serious violation because capacity limits are set to ensure the safety of children in care.[34]

[34] *See* Minn. R. 9502.0325, subp. 1, .0365 (2015).

Licensee disputes that she provided false or misleading information to Vang, the Licensing Worker who investigated the over-capacity complaint. Assuming Licensee is correct and there was no false or misleading information provided to Vang, the sanctions applied are still within reason. The Department did not abuse its discretion for the violation of being over-capacity. Licensee admitted to Vang, and at hearing, that she knew she was over-capacity. Further, the over-capacity violation was not based on having merely too many children under care, but having two extra infants in her care. The rules specifically limit the number of infants due to the greater needs infants have for adult care.

It cannot be concluded that Licensee did not provide false or misleading information to Vang during the investigation. This case presented a “he said-she said” situation at hearing. Both witnesses struggled on the witness stand in ways that undermined their credibility. Vang underwent questioning from both attorneys and the Administrative Law Judge before his explanation of what happened during his inspection and multiple visits to the Licensee’s day care on September 25, 2014, were reasonably clear. That explanation matched his written account in the recommendation to the Department. Thus, the Department met the relatively low standard of reasonable cause that the events occurred the way Vang stated.

Licensee was an extremely nervous witness, visibly shaking on the witness stand. Her story pointedly contradicted Vang’s with regard to whether he advised her and her husband that his visit was based on a complaint of being over-capacity. Vang said he advised Licensee of that. Licensee said he never told her. Further, Vang said Licensee told him that the five children he saw in the room were the only children in her care that day. Licensee said no question about the number of children present was posed and that Vang merely asked for files for each one of the children he could see. She said that she did not deliberately fail to disclose that there were three additional infants in another room.

Given this conflict in the versions of events, Licensee needed to corroborate her story. She did not do so. Despite her husband being present during the investigation on September 25, 2014, he did not testify in support of Licensee’s version of events. The lack of credible corroboration and Licensee’s demeanor on the stand leads to a conclusion that it was Vang’s version of events that occurred. Thus, Licensee did not show by a preponderance of the evidence that she was in compliance with the law.

Given the facts found, and given the seriousness of the violations, even if only the over-capacity violation is considered, it is respectfully recommended that the Department’s Order to Pay a Fine and Order for Conditional License be **AFFIRMED**.

J. R. M.