

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 Barbara
Hinrichs

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

This matter came before Administrative Law Judge Jim Mortenson on August 2, 2016, for an evidentiary hearing. The hearing was held at the Goodhue County Government Center, 509 West Fifth Street, Red Wing, Minnesota. The hearing record closed on August 16, 2016.

Carol K. Lee, Assistant Winona County Attorney, appeared on behalf of the Minnesota Department of Human Services (department). Licensee Barbara Storing (f.k.a. Hinrichs) appeared on her own behalf without counsel.

STATEMENT OF THE ISSUES

1. Did the commissioner of human services (commissioner) have reasonable cause to sanction the licensee by revoking her family child care license?
2. If the commissioner had reasonable cause to revoke licensee's family child care license, did licensee demonstrate she was in full compliance with those laws or rules that the commissioner alleges licensee violated, at the time that the commissioner alleges the violations of law or rules occurred?

SUMMARY OF RECOMMENDATION

The commissioner did not have reasonable cause to revoke licensee's family child care license. The revocation should be **RESCINDED**.

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

FINDINGS OF FACT

Key Individuals Involved

1. Licensee Barbara Storing, formerly known as Barbara Hinrichs, operated a licensed family day care at her residence in Lake City, Minnesota.¹

¹ Exhibits (Exs.) 20, 21, 22, 23; Testimony (Test.) of Christine Reich; Test. of Barbara Storing.

2. Christine Reich is a Goodhue County Health and Human Services (agency) family child care licenser.² Ms. Reich has worked for the county since 1993 and has been a licenser since March 1999.³

3. Nicholas Meyer is Ms. Storing's adult son.⁴ Mr. Meyer lived in Ms. Storing's residence from sometime in December 2013 until May 20, 2014.⁵ Mr. Meyer is a disqualified individual under Minn. Stat. § 245C.14 (2014).⁶

Complaint Investigation

4. On January 29, 2014, a man from Minneapolis, J.K., called the agency to make a complaint against Ms. Storing's day care.⁷

5. J.K. was a former roommate of Ms. Storing's other adult son, Brady Meyer, and had been in a legal dispute with Brady.⁸

6. J.K. made several allegations about Ms. Storing's day care, including that Nicholas Meyer was residing in Ms. Storing's home and that he had been convicted "of drugs and domestic assault."⁹ J.K. also alleged that Nicholas and Brady Meyer "smoked pot" in Ms. Storing's garage after day care hours.¹⁰

7. On January 29, 2014, the agency was only aware of Ms. Storing and two of her children, Zachary and Chelsea Hinrichs, living in Ms. Storing's residence.¹¹

8. On February 3, 2014, Ms. Reich conducted an investigation into the complaint and inspected Ms. Storing's home.¹² During her inspection, she found that Brady, Nicholas, Kristy Lauer (Nicholas' girlfriend), and Nicholas' and Kristy's infant were all living in the home.¹³ Ms. Reich could not determine when any of the three adults moved into the home because different answers were provided.¹⁴

² Test. of C. Reich; Ex. 2.

³ Test. of C. Reich.

⁴ Test. of B. Storing.

⁵ Exs. 5, 14, 15, 17, 18; Test. of Zachary Hinrichs; Test. of Chelsea Hinrichs; Test. of B. Storing. (Ms. Storing testified that Mr. Meyer moved into her home in mid-January 2013. Mr. Meyer's consent form (Ex. 5) and the testimony of Ms. Storing's teenage children directly refute that. However, testimony and documentary evidence substantiates Ms. Storing's statements about when Mr. Meyer moved out.)

⁶ Exs. 13, 15; Test of C. Reich.

⁷ Exs. 3, 4; Test. of C. Reich; Test. of B. Storing; Test. of Z. Hinrichs.

⁸ Test. of B. Storing; Test. of Z. Hinrichs.

⁹ Exs. 3, 4.

¹⁰ *Id.*

¹¹ Test. of C. Reich.

¹² Test. of C. Reich; Ex. 23.

¹³ Test. of C Reich

¹⁴ *Id.*; Ex. 2.

9. Ms. Reich had the three new adults in the home provide consent to conduct background checks on each, and they all did so on February 3, 2014.¹⁵

10. Ms. Reich inspected the residence as well as the attached garage for evidence of smoking.¹⁶ Ms. Reich did not find evidence of marijuana or marijuana usage.¹⁷ Ms. Reich did smell cigarette smoke in the attached garage, although no cigarettes, butts, or ashtrays were found.¹⁸ The garage did contain boxes of belongings and furniture of the three new adults, as well as Brady's car.¹⁹

11. Nicholas and Brady both smoke.²⁰ Ms. Storing did not permit smoking in the house or garage at any time.²¹

12. During the February 3, 2014, inspection, Ms. Reich found that Ms. Storing did not have all of the required records for one child, M.S.²² There was no admission and arrangement form, no immunization records for M.S., and no evidence that the "policy for maltreatment" was provided to M.S.'s parents.²³ Ms. Reich also found that Ms. Storing had no "provider policy/permission forms" for M.S.²⁴

13. On February 13, 2014, Ms. Reich issued a correction order to Ms. Storing, which included the following violations, correction deadlines, and correction dates:

- Violations of Minn. R. 9502.0405, subp. 4, and .0435, subp. 8(C), for failing to have admissions and arrangement form for M.S. This was to be corrected by February 15, 2014. It was corrected on February 5, 2014.
- Violation of Minn. R. 9502.0405, subp. 4(C), for failing to have an immunization form for M.S. This was to be corrected by February 15, 2014. It was corrected on February 5, 2014.
- Violations of Minn. R. 9502.0405, subp. 3, .435, subp. 16(F), and Minn. Stat. § 245A.04, subd. 1(c) and (d), for failing to have "policy/permission forms" for M.S. This was to be corrected by February 15, 2014. It was corrected on February 5, 2014.

¹⁵ Test. of C. Reich; Exs. 2, 5, 23.

¹⁶ Test. of C. Reich.

¹⁷ Test. of C. Reich.

¹⁸ Test. of C. Reich.

¹⁹ *Id.*; Test. of B. Storing; Test. of Z. Hinrichs.

²⁰ Test. of B. Storing; Test. of Z. Hinrichs; Test. of C. Hinrichs.

²¹ *Id.*; Ex. 23.

²² Ex. 23; Test. of C. Reich.

²³ *Id.*

²⁴ Ex. 23.

- Violation of Minn. Stat. § 245A.145, for failure to have given the Department’s policy on maltreatment for M.S.’s parent. This was to be corrected by February 15, 2014. It was corrected on February 5, 2014.
- Violation of Minn. R. 9502.0375, subp. 2(A), for failing to report a change in household membership (four members) within 30 days. This was to be corrected by February 3, 2014, and was corrected on that date.
- Violation of Minn. Stat. § 245C.03, subd. 1, for failing to complete background studies on three household members over 12 years old. This was to be corrected by February 3, 2014, and was corrected on that day.
- Violation of Minn. R. 9502.04[2]5, subd. 19, for permitting smoking in the attached garage on February 3, 2014. This was to be corrected by February 3, 2014, and was corrected on that date.²⁵
- Violation of Minn. Stat. § 144.414, for permitting smoking afterhours in the attached garage without providing notice to parents that afterhours smoking was allowed. This was to be corrected by February 15, 2014 and was corrected on that date.²⁶

14. Of the three background studies completed, only Nicholas Meyer was determined to be disqualified from direct contact with, or access to, persons served by Ms. Storing’s day care.²⁷ This was due to a felony conviction in 2006 and a police report of misdemeanor assault in 2011.²⁸ Both Mr. Meyer and Ms. Storing were informed of Mr. Meyer’s disqualification in letters from Ms. Reich, dated April 23, 2014.²⁹

15. Ms. Storing was advised, in the April 23, 2014 letter, that Mr. Meyer could request reconsideration of the disqualification determination and, if he did not do so “within 30 calendar days” Ms. Storing would “be required to immediately remove [Mr. Meyer] from” her home.³⁰

²⁵ Ms. Storing stated on the correction order that smoking was not allowed in the house or garage at any time.

²⁶ Ex. 23. As noted above, Ms. Storing stated on the correction order for this violation that smoking was not allowed in the house or garage at any time.

²⁷ Ex. 13; Test. of C. Reich.

²⁸ Exs. 7, 9, 11. Ms. Reich determined, based on the police report, that there was a preponderance of evidence that the alleged assault occurred.

²⁹ Exs. 12, 13.

³⁰ Ex. 12.

16. Mr. Meyer did not request reconsideration of his disqualification and he moved out of Ms. Storing's home on May 20, 2014.³¹

17. Mr. Meyer moved into the Sunset Motel in Lake City, Minnesota.³² He subsequently moved into a home owned by the owner of the motel which was undergoing remodeling on May 20, 2014.³³

18. Ms. Reich did not learn about Mr. Meyer's move until August 6, 2014.³⁴ She was informed of the move by Ms. Storing via telephone.³⁵ Ms. Reich requested Mr. Meyer's exact address and date of move from Ms. Storing.³⁶

19. On August 6, 2014, following their phone conversation, Ms. Reich sent Ms. Storing a letter requesting Ms. Storing have Mr. Meyer "submit his request for reconsideration into me with a copy of his lease which will verify his address and the date that he moved out of your home. Please request that he submit this to me by August 18, 2014."³⁷ Ms. Storing provided the information requested on August 19, 2014, but it did not include a lease because Mr. Meyer had not signed a lease for his new residence.³⁸

20. In the August 6, 2014 letter, Ms. Reich advised Ms. Storing that she was required to notify the agency within 30 days of a change in household, referring to Mr. Meyer's move from the home.³⁹ The agency did not issue a correction order or otherwise cite Ms. Storing for this violation.⁴⁰

21. On August 12, 2014, Ms. Storing sent Ms. Reich an email message stating that she would be giving notice to the parents of the children in her day care that she will no longer be operating the day care.⁴¹ Ms. Storing did not specify when the day care would cease operating.⁴²

22. Between August 19, 2014, and January 13, 2015, Ms. Reich conducted no further investigation into Ms. Storing's day care and did not inquire about when it ceased

³¹ Exs. 14, 15, 17; Test. of B. Storing; Test. of C. Hinrichs; Test. of Z. Hinrichs; Test. of C. Reich.

³² Ex. 17; Test. of B. Storing; Test. of Z. Hinrichs.

³³ *Id.*

³⁴ Exs. 14, 15.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Ex. 15.

³⁸ Ex. 17; Test. of B. Storing.

³⁹ Ex. 15.

⁴⁰ Ms. Storing advised Ms. Reich that she had never been reprimanded or advised that she must provide notice when people leave her home, only when they move in. This is immaterial because the subsequent revocation was not based on this violation.

⁴¹ Ex. 16.

⁴² *Id.* Ms. Storing testified that she sent her family child care license to Ms. Reich on August 12, 2014. There is no evidence to support this as Ms. Reich did not receive the license, and there is no credible evidence about when the day care actually ceased operating. Ms. Storing repeated the argument that she "quit Daycare" on August 12, 2014, in her written closing. The evidence from Ms. Reich and Ms. Storing's daughter is more compelling. (See Findings of Fact 22, 23.)

operating. On January 14, 2015, Ms. Reich made an unannounced visit to Ms. Storing's home.⁴³ Ms. Storing advised Ms. Reich that she only cared for her grandson and two other four-year-olds.⁴⁴ Ms. Storing advised Ms. Reich that she would cease operating her day care after she obtained another job.⁴⁵

23. Ms. Storing stopped providing day care on an unknown date in the spring of 2015.⁴⁶ Ms. Reich was informed of this during an unannounced visit to Ms. Storing's home on August 26, 2015, by Ms. Storing's daughter (Ms. Storing was not home).⁴⁷

Negative Licensing Action

24. On September 29, 2015, Ms. Reich sent a letter to the commissioner on behalf of the agency, recommending revocation of Ms. Storing's family child care license.⁴⁸

25. The recommendation letter listed statutes and rules without specifying how each one was violated.⁴⁹

26. The recommendation letter included a brief statement of the February 3, 2014 inspection of the day care home and focused on the finding that three new adults were living in the home at that time; that it was not clear when they moved in; that Ms. Storing had failed to inform the agency of the new residents; and background studies had not been completed on the new residents.⁵⁰ The letter advised that a correction order had been issued on February 3, 2014, and that corrections were completed by February 15, 2014.⁵¹

27. The recommendation of revocation included a statement that Nicholas Meyer was disqualified, that no request for reconsideration of the disqualification had been made, and that the disqualification was conclusive.⁵² The recommendation advised the commissioner that Ms. Storing had notified the agency on August 19, 2014, that Mr. Meyer had moved out of the day care home on May 20, 2014, but that Ms. Storing failed to prove that he had moved into a new permanent residence.⁵³

28. The recommendation of revocation noted the January 14, 2015 and August 26, 2015 unannounced visits.⁵⁴

⁴³ Exs. 18, 19; Test. of B. Storing; Test. of C. Reich.

⁴⁴ Ex. 18.

⁴⁵ *Id.*

⁴⁶ Test. of C. Hinrichs.

⁴⁷ Exs. 18, 19; Test. of C. Hinrichs; Test. of B. Storing; Test. of C. Reich.

⁴⁸ Ex. 2.

⁴⁹ *Id.*

⁵⁰ *Id.* at 15.

⁵¹ *Id.*

⁵² *Id.* at 16.

⁵³ *Id.*

⁵⁴ Ex. 2 at 16.

29. The letter advised the commissioner of the reasons for the recommendation, which stated:

Because Nicholas' disqualification is conclusive; the license holder failed to report a change in her household; and license holder failed to submit a background study for the new household members prior to allowing direct contact or access to persons served/and the additional violations of allowing smoking in the attached garage during day care hours and failing to have required paperwork completed on a child in care, Goodhue County Health & Human Services is recommending that the Family Child Care License of Barbara Hinrichs be revoked.⁵⁵

30. The recommendation and the record do not discuss the severity of each violation.⁵⁶

31. The recommendation and the record do not state specifically whether each violation was recurring or nonrecurring.⁵⁷

32. The recommendation and the record do not state the effect of each violation on the persons served by the day care.⁵⁸

33. The recommendation and the record do not include an evaluation of the risk of harm to persons served by the day care.⁵⁹

34. The recommendation and record do not include any information about the qualifications of the licensee or persons living in the residence.⁶⁰

35. Ms. Reich sent the department the records it had concerning Ms. Storing's day care for the prior five years.⁶¹

36. Notice of the recommendation was not sent to Ms. Storing.⁶²

37. On April 15, 2016, the department issued the order of revocation to Ms. Storing.⁶³

38. The order listed a series of statutes and rules as "reasons" for the revocation.⁶⁴

⁵⁵ *Id.*

⁵⁶ Ex. 2.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Test. of C. Reich.

⁶² Ex. 2.

⁶³ Ex. 1.

⁶⁴ *Id.*

39. The order restated violations that were found on February 3, 2014, September 10, 2013, and August 17, 2011.⁶⁵ The order stated that the violations found on those dates were “serious and chronic” and were a basis for revocation, but did not give further explanation.⁶⁶ The order continued and listed the following reasons for the revocation:

- Failing to submit a background study for three individuals.
- An individual requiring a background study is disqualified from any position allowing direct contact with, or access to, persons served by DHS licensed programs.
- Failing to report a change in household membership to the agency.
- Failing to prohibit smoking in a garage attached to the home during child care hours and failure to provide notice to parents that smoking is permitted after child care hours.
- Failing to provide a tight fitting sheet for a crib.
- Repeatedly failing to maintain documentation for children’s records.
- Failing to provide documentation of training.⁶⁷

40. The order informed licensee that she could appeal the order within ten calendar days after receipt of the order.⁶⁸ The order was timely appealed.⁶⁹

Prior Correction Orders

41. The correction order dated August 17, 2011, included ten cited violations.⁷⁰ Of those ten violations, seven were cited by the commissioner in her Order of Revocation:

- Failing to ensure that an above-ground pool that was not fenced in was inaccessible to children in the outdoor play space.⁷¹ This was corrected on August 18, 2011.⁷²

⁶⁵ *Id.* at 6-7.

⁶⁶ *Id.* at 7.

⁶⁷ *Id.*

⁶⁸ Ex. 1 at 7.

⁶⁹ Uncontested fact.

⁷⁰ Ex. 21.

⁷¹ Ex. 1 at 7.

⁷² Ex. 21.

- Failing to maintain water temperature at or below 120° Fahrenheit.⁷³ The water temperature was corrected from 121.6° to 120° Fahrenheit on August 18, 2011.⁷⁴
- Failing to provide documentation of complete admission and arrangement forms for five children in care.⁷⁵ This was corrected on August 18, 2011.⁷⁶
- Failing to provide documentation to administer over-the-counter medication for seven children in care.⁷⁷ This was corrected on August 18, 2011.⁷⁸
- Failing to provide documentation of parental permission for wading pool use for nine children in care.⁷⁹ This was corrected on August 18, 2011.⁸⁰
- Failure to provide documentation of immunization records for eight children in care.⁸¹ This was corrected on August 18, 2011.⁸²

42. The correction order dated September 10, 2013, included seven cited violations.⁸³ Of those seven violations, six were cited by the commissioner in her order of revocation:

- Failing to have a tight fitting sheet on a crib mattress used for a sleeping infant.⁸⁴ This was corrected on September 10, 2013.⁸⁵

⁷³ Ex. 1 at 7.

⁷⁴ Ex. 21.

⁷⁵ Ex. 1 at 7.

⁷⁶ Ex. 21.

⁷⁷ Ex. 1 at 7. (No evidence in record that children were given such medications without permission, but citation was not appealed.)

⁷⁸ Ex. 21.

⁷⁹ Ex. 1 at 7. (No evidence in record that children were permitted to use a wading pool without permission, but citation was not appealed.)

⁸⁰ Ex. 21.

⁸¹ Ex. 1 at 7.

⁸² Ex. 21.

⁸³ Ex. 22.

⁸⁴ Ex. 1 at 6. (The record, at Ex. 22, shows the violation was for failing to have a fitted sheet on a “pack n play” used by a toddler, which is not a violation of Minn. Stat. §245A.1435, as cited. However, this citation was not appealed.)

⁸⁵ Ex. 22.

- Failing to provide documentation of annual training on abusive head trauma.⁸⁶ This was corrected on September 10, 2013.⁸⁷
- Failing to provide documentation of immunization records for two children in care.⁸⁸ This was corrected on September 10, 2013.⁸⁹
- Failing to maintain water temperature at or below 120° Fahrenheit.⁹⁰ The water temperature was corrected from 121° to 120° Fahrenheit on September 10, 2013.⁹¹
- Failing to maintain the fire extinguisher.⁹² This was corrected on September 28, 2013, with a new fire extinguisher.⁹³
- Failing to provide documentation of parental permission for wading pool use for two children in care.⁹⁴ This was corrected on August 18, 2011.⁹⁵

43. Any facts in the memorandum below not specifically found above are hereby incorporated into these findings of fact.

Based upon these findings of fact, and for the reasons explained in the memorandum below, the administrative law judge makes the following:

CONCLUSIONS OF LAW

1. The administrative law judge and the commissioner have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50; 245A.07, subd. 3(c); 08 (2016).

2. It is the duty of the judge to, among other things, take “notice of the degree to which the agency has . . . (ii) fulfilled all relevant procedural requirements of law or rule. . . .”⁹⁶

⁸⁶ Ex. 1 at 6.

⁸⁷ Ex. 22.

⁸⁸ Ex. 1 at 7.

⁸⁹ Ex. 22.

⁹⁰ Ex. 1 at 7.

⁹¹ Ex. 21.

⁹² Ex. 1 at 7. (Records show the citation was for failing to have fire extinguisher serviced annually, which is not a requirement under the cited regulation, Minn. R. 9502.0425, subp. 16. However, the citation was not appealed.)

⁹³ Ex. 22.

⁹⁴ Ex. 1 at 7. (No evidence in record that children were permitted to use a wading pool without permission, but citation was not appealed.)

⁹⁵ Ex. 21.

⁹⁶ Minn. Stat. § 14.50 (2016).

3. Procedural requirements were not complied with when the agency failed to provide licensee with written notice that the agency was recommending a negative licensing action to the commissioner pursuant to Minn. R. 9543.0100, subp. 6 (2015). The error was harmless.

4. Procedural requirements impacting the substance of this matter were not complied with when the agency failed to provide the commissioner with information required by Minn. R. 9543.0100, subp. 1(A) (2015), with its recommendation for revocation.

5. The commissioner must demonstrate reasonable cause for the revocation of the license holder's family child day care license.⁹⁷ The commissioner may revoke a license if:

- (1) a license holder fails to comply fully with applicable laws or rules;
- (2) a license holder, a controlling individual, or an individual living in the household where the licensed services are provided or is otherwise subject to a background study has a disqualification which has not been set aside under section 245C.22;
- (3) a license holder knowingly withholds relevant information from or gives false or misleading information to the commissioner in connection with an application for a license, in connection with the background study status of an individual, during an investigation, or regarding compliance with applicable laws or rules; or
- (4) after July 1, 2012, and upon request by the commissioner, a license holder fails to submit the information required of an applicant under section 245A.04, subdivision 1, paragraph (f) or (g).⁹⁸

6. The commissioner has not shown that licensee failed to comply fully with applicable laws or rules. The evidence shows all violations for which licensee has been cited since 2011 have been corrected.

7. The commissioner has not shown that the disqualified individual who had been living in licensee's home on February 3, 2014, remained in the home 30 days following the notice of his disqualification.

⁹⁷ Minn. Stat. § 245A.08, subd. 3(a).

⁹⁸ Minn. Stat. § 245A.07, subd. 3(a) (2016).

8. The agency never cited licensee for withholding information or providing false or misleading information. Therefore, the commissioner cannot show the licensee knowingly withheld relevant information or gave false or misleading information to the commissioner in connection with the background study status of an individual, during the investigation, or regarding her compliance with applicable laws or rules.

9. Neither the agency nor the commissioner have accused licensee of failing to provide her social security number, a complete business name, or a notarized signature.

10. Based on conclusions six through nine, the commissioner has not shown reasonable cause for the revocation of the licensee's family child day care license.

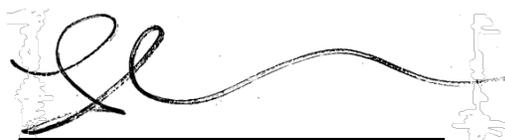
Based upon the findings of fact, conclusions of law, record, and as explained in the memorandum below, the administrative law judge makes the following:

RECOMMENDATION

The administrative law judge respectfully recommends that the order for revocation issued April 15, 2016, be **RESCINDED**.

The administrative law judge also respectfully recommends that the commissioner require the licensee to submit her family child care license to the commissioner by a date certain, based on licensee's declaration that she has stopped giving care, pursuant to Minn. R. 9502.0335, subp. 15 (2015). If the licensee fails to submit her license it is recommended that department and agency records reflect that the licensee's family day care license has been surrendered as of August 2, 2016, or, if the license renewal date has passed, that the license has not been renewed.

Dated: August 30, 2016

A handwritten signature in black ink, appearing to read 'Jm Mortenson', written over a horizontal line.

JIM MORTENSON
Administrative Law Judge

Reported: Digitally recorded.

NOTICE

This Report is a recommendation, not a final decision. The commissioner will make the final decision after a review of the record. Under Minn. Stat. § 14.61 (2016), 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 (2016). 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 (2016), 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

Arguments

The department provides three reasons for the revocation of Ms. Storing's family child care license:

- 1) Correction order of August 7, 2011, for which the licensee did not request reconsideration;
- 2) Correction order of September 10, 2013, for which the licensee did not request reconsideration; and
- 3) "Events stemming from a home visit from Goodhue County Health and Human Services on February 3, 2014[,] after a report."⁹⁹

The licensee argues that the agency licensor, Ms. Reich, made "many false accusations" and behaved inconsistently.¹⁰⁰ Licensee argues that she complied with all

⁹⁹ DEPARTMENT SUMMATION at 2 (August 15, 2016).

¹⁰⁰ LICENSEE SUMMATION (August 16, 2016).

correction orders and that there were no negative concerns about her day care raised by families of children in care.

While the evidence does not show the agency made false accusations as licensee asserts, it does show the agency made procedural errors which have had an effect on the substance of the commissioner's revocation order. Further, while the evidence does show that licensee was less than credible at hearing, her testimony is credited on material facts where it is corroborated by other witnesses (all of whom provided credible testimony) or documentary evidence created at or near the time of the events in question.

Analysis

If a family child care license holder fails "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," a correction order may be issued to the license holder.¹⁰¹ A correction order must include, among other things, the time frame in which to correct the violation.¹⁰² Correction orders may be appealed by license holders.¹⁰³ If a correction order is not appealed and the "license holder has not corrected the violations specified in the correction order . . . the commissioner may impose a fine and order other licensing sanctions pursuant to section 245A.07."¹⁰⁴ The commissioner may propose "a sanction as specified in section 245A.07, prior to issuing a correction order. . . ."¹⁰⁵ Pursuant to Minn. R. 9543.0090, subp. 2 (2015):

A correction order may be issued if all of the following conditions are met:

- A. the violation does not imminently endanger the health, safety, or rights of persons served by the program;
- B. the violation is not listed in part 9543.0100, subpart 3;
- C. the violation is not serious or chronic; and
- D. the violation will be corrected within a reasonable time.

"A correction order must include a specific time period for correcting the violation."¹⁰⁶ "The agency shall ensure that license holders provide evidence of compliance with a correction order or, if appropriate, recommend further action to the commissioner."¹⁰⁷

¹⁰¹ Minn. Stat. § 245A.06, subd. 1(a) (2016).

¹⁰² Minn. Stat. § 245A.06, subd. 1(a).

¹⁰³ Minn. Stat. § 245A.06, subd. 2 (2016).

¹⁰⁴ Minn. Stat. § 245A.06, subd. 3 (2016).

¹⁰⁵ Minn. Stat. § 245A.06, subd. 1(b) (2016).

¹⁰⁶ Minn. R. 9543.0090, subp. 3 (2015).

¹⁰⁷ Minn. R. 9543.0090, subp. 4 (2015).

A family child care license may be sanctioned, including revocation, when the license holder fails to comply with applicable law or rule.¹⁰⁸ When applying a sanction to a license, “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.”¹⁰⁹ The “failure to reapply or closure of a license by the license holder prior to the completion of any investigation does not preclude the commissioner from issuing a licensing sanction” at the conclusion of the investigation.¹¹⁰

County human services agencies have the authority to, among other things: conduct inspections of licensed programs; investigate allegations of license violations; issue correction orders; and recommend negative licensing actions, such as revocation.¹¹¹ When a complaint about a licensed program is made:

The agency shall gather sufficient information about every complaint to:

- A. make a determination that a licensing violation occurred, did not occur, or no determination can be made; and
- B. if a violation occurred, issue a correction order or recommend a negative licensing action.¹¹²

Pursuant to Minn. R. 9543.0100, subp. 1 (2015), when an agency makes a recommendation to the commissioner for a negative licensing action, the agency must submit to the commissioner:

- (1) the citation to laws or rules that have been violated;
- (2) the nature and severity of each violation;
- (3) whether the violation is recurring or nonrecurring;
- (4) the effect of the violation on persons served by the program;
- (5) an evaluation of the risk of harm to persons served;
- (6) any evaluations of the program by persons served or their families;
- (7) relevant facts, conditions, and circumstances concerning the operation of the program, including information identified in part 9543.0040, subpart 5, item C;

¹⁰⁸ Minn. Stat. § 245A.07, subds. 1(a), 3(a) (2016).

¹⁰⁹ Minn. Stat. § 245A.07, subd. 1(a).

¹¹⁰ Minn. Stat. § 245A.07, subd. 1(d) (2016).

¹¹¹ Minn. R. 9543.0030, subp. 1; .0020, subp. 15; .0070, subp. 2 (2015).

¹¹² Minn. R. 9543.0070, subp. 3 (2015).

- (8) any relevant information about the qualifications of the applicant or license holder or persons living in the residence; and
- (9) any aggravating or mitigating factors related to the violation[.]

“The agency shall give written notice to a license holder when the agency recommends a negative licensing action to the commissioner.”¹¹³

The department argues that licensee did not request reconsideration of the correction orders from 2011 and 2013, and so her license should be revoked.¹¹⁴ While the agency cited the licensee for a number of different violations in these correction orders, they were not the basis of the agency’s recommendation for revocation. Rather, the agency recommended revocation based on issues found during the February 2014 inspection. According to the agency, the recommendation for revocation was:

[b]ecause Nicholas’ disqualification is conclusive; the license holder failed to report a change in her household; and license holder failed to submit a background study for the new household members prior to allowing direct contact or access to persons served[.]¹¹⁵

Additional reasons for the recommendation included the allegations of smoking in the attached garage during day care hours, and failing to have required paperwork on one child in care (M.S.). Nevertheless, the department based its revocation order, in part, on these prior correction orders.

The revocation order itself states the violations from 2011, 2013, and 2014 are “serious and chronic” without explanation.¹¹⁶ “[T]he severity of an administrative sanction must reflect the seriousness of the violation.”¹¹⁷ While the cumulative effect of these violations may have warranted a licensing sanction at some point, neither the agency nor the department has shown they were serious enough to warrant revocation. Many of the citations were not violations based on the evidence submitted in this case.¹¹⁸ More importantly, however, is that all of the violations cited in these correction orders were timely complied with. Therefore, they do not provide a basis to revoke Ms. Storing’s family child care license.

The remaining argument for revocation stems solely from the February 2014 inspection which was, as noted above, the basis for the agency’s recommendation. Remarkably, the agency stated in its recommendation for revocation that the correction order issued on February 3, 2014, was “completed by February 15, 2014.”¹¹⁹

¹¹³ Minn. R. 9543.0090, subp. 6 (2015).

¹¹⁴ DEPARTMENT SUMMATION at 4 (August 15, 2016).

¹¹⁵ Ex. 2 at 16.

¹¹⁶ Ex. 1 at 7.

¹¹⁷ *In re Revocation of Family Child Care License of Burke*, 666 N.W.2d 724, 728 (Minn. Ct. App. 2003).

¹¹⁸ This may be immaterial because, as the department states, the correction orders were not appealed.

¹¹⁹ Ex. 2 at 15.

Nevertheless, the recommendation for revocation was made based in part on the corrected violations.

One remaining point appears to be the true basis for the recommendation and the revocation order, however. That is the situation concerning Ms. Storing's adult son, Nicholas Meyer. Mr. Meyer is a disqualified individual. This fact is not in dispute. However, simply having a relation who is a disqualified individual is not a basis for revocation. Rather, revocation may be based on "an individual living in the household where the licensed services are provided or is otherwise subject to a background study has a disqualification which has not been set aside[.]"¹²⁰

Mr. Meyer was determined to be disqualified and he and Ms. Storing were provided notice of this on April 23, 2014. Ms. Storing and Mr. Meyer were given 30 days in which Mr. Meyer could request reconsideration of the disqualification or Ms. Storing must have him move out of her home. Ms. Storing and Mr. Meyer made the decision that Mr. Meyer would leave the home and he did so on May 20, 2014. Ms. Storing did not inform the agency of this until the agency inquired in August 2014. While the failure to inform the agency of the change in household was a violation, Ms. Storing was not cited for it.¹²¹

Most interestingly, and importantly, neither the agency nor the department has alleged or directly asserted that Mr. Meyer remained in Ms. Storing's home after May 20, 2014.¹²² Ms. Reich testified that she was not satisfied with Ms. Storing's statement that Mr. Meyer had moved out, nor the provision of a receipt from the motel Mr. Meyer moved into prior to moving into his new home. Rather, Ms. Reich wanted to see a signed lease. Mr. Meyer never signed a lease. The burden is on the department to show reasonable cause for revocation. This burden is not met merely by asserting the licensee failed to provide a signed lease, which is not a legal requirement she must meet. Rather, the burden required the department to show that Mr. Meyer was still living in the home after May 23, 2014. Again, it never expressly alleged this and did not show this. Thus, the department failed to meet its burden to show reasonable cause for revocation based on the disqualification of Mr. Meyer.

Credibility Determinations

Of the four witnesses who testified at the hearing, only Ms. Storing was not fully credible. Examples of her duplicity include:

- 1) Ms. Storing's testimony that she closed her day care and sent her family child care license to Ms. Reich in August 2014. Ms. Reich never received the license, and her credibility was not successfully challenged. Further, Ms. Storing told Ms. Reich in January 2015 that

¹²⁰ Minn. Stat. § 245A.07, subd. 3(a).

¹²¹ Ms. Storing was cited for the failure to inform the agency about when Mr. Meyer, his family, and his brother moved into Ms. Storing's home. This was part of the February 3, 2014 correction order, which the agency determined was corrected by February 15, 2014.

¹²² See Exs. 1, 2, DEPARTMENT SUMMATION (August 15, 2016).

she still cared for two neighbor children or a cousin's child (the former was recorded by Ms. Reich at the time, the latter was Ms. Storing's testimony at hearing) on a "drop-in" basis, as well as her grandchild. She also told Ms. Reich in January 2015 that she would stop providing day care once she found another job. Ms. Storing's daughter, Chelsea, credibly testified that her mother stopped providing day care sometime in the spring of 2015, although she could not remember the exact date. Chelsea said this to Ms. Reich in August 2015, and repeated it at hearing.

- 2) Ms. Storing gave conflicting information about when her adult children moved into her house. This occurred during the February 3, 2014 inspection, and again at hearing. Her son, Nicholas, signed a consent form stating he moved into the home in December 2013. Ms. Storing stated in February 2014 that he arrived in December 2013, and at hearing testified that the date was approximately January 18, 2014. This was stated in relation to the allegation in the February 2014 correction order for a violation of not reporting a change in household within 30 days, which Ms. Storing was challenging on the stand.
- 3) Ms. Storing testified that Ms. Reich's February 2014 inspection occurred on February 13, 2014, despite the records showing it was on February 3, 2014. While this alone could have been an error, it is noted here because she testified that she remembered dates specifically and that exact dates were impossible to remember. These responses were based on questions posed at hearing, thus attempting to justify what she could or could not remember.

Thus, Ms. Storing's story shifted to whatever was seemingly convenient at the time. This is what may have raised a flag for Ms. Reich during her review of the matter. However, the agency never cited Ms. Storing for providing false or misleading information to Ms. Reich. These examples are only noted here for purposes of a credibility determination.

Conclusion

The commissioner did not demonstrate reasonable cause for the revocation of Ms. Storing's family child care license. The reasons for the revocation were all timely corrected, including the removal of a disqualified individual from Ms. Storing's home. Thus, it is respectfully recommended that the commissioner rescind the April 15, 2016 order of revocation.

Ms. Storing has closed her day care, but she never sent her license to the commissioner as required by Minn. R. 9502.0341, subp. 15 (2015). Ms. Storing claims she sent her license to the agency, but the agency never received it. If Ms. Storing has a

copy of her license, she should be required to send it to the commissioner. If she does not have a copy of the license, it is recommended that Ms. Storing's record with the department and agency reflect that her license has been surrendered as of August 2, 2016, or not renewed if the renewal date has passed. This should not impact the commissioner's ability to put conditions in place if the licensee re-applies in the future, based on a review of her record.

J. R. M.