

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

In the Matter of the Revocation of the Child
Foster Care License of Denise Ingram

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

This matter came before Administrative Law Judge Stephen D. Swanson for an evidentiary hearing on the Licensee's appeal from an Order of Revocation dated October 26, 2015. The evidentiary hearing was held on January 26, 2016, in Room 715, Anoka County Government Center, 2100 3rd Avenue, Anoka, Minnesota.

Kelsey Kelley, Assistant Anoka County Attorney, appeared on behalf of the Minnesota Department of Human Services and the Anoka County Human Services (Department). Denise Ne'Shelle Odom, formally known as Denise Ingram (Licensee), appeared and represented herself.

Exhibits 1, 2, and 100 were received in evidence. No other exhibits were offered. Marqueta W. Hainje testified on behalf of the Department. The Licensee testified on behalf of herself.

The record closed on January 26, 2016.

STATEMENT OF THE ISSUES

1. Did the Department demonstrate, by a preponderance of the evidence, reasonable cause that sanctions should be imposed upon the Licensee's child foster care license?
2. If the Department demonstrated reasonable cause to show that sanctions should be imposed upon the Licensee's child foster care license, did the Licensee show, by a preponderance of the evidence that she was in compliance with all applicable statutory and rule requirements?
3. If sanctions are to be imposed, is revocation of the license appropriate?

SUMMARY OF RECOMMENDATION

The Administrative Law Judge concludes that the Department demonstrated reasonable cause for sanctions to be imposed upon the child foster care license and that the Licensee did not show full compliance with all applicable statutory and rule requirements, but the Administrative Law Judge concludes that revocation of her license

is not an appropriate regulatory sanction in this instance, and recommends the imposition of a correction order and conditional license.

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

FINDINGS OF FACT

1. The Licensee has been a licensed child foster care provider for more than five years, operating her program in her home in Columbia Heights, Minnesota, pursuant to License No. 1058007, issued in June 2010. She has provided foster care services, without incident or adverse licensing action, for at least 20 children. She has taken difficult cases, worked hard, and developed a positive relationship with the Anoka County Community Social Services and Behavioral Health Department (hereinafter Anoka County Social Services).¹

2. Jeff Oakes is a social worker in the permanency unit of Anoka County Social Services. He makes child foster care placements.²

3. On or about April 9, 2015, Mr. Oakes contacted the Licensee and requested that the Licensee accept for placement a 16-year-old who was about to be released from Lino Lakes. The Licensee responded that the time was not good because she would be entering the hospital the following week for knee surgery. The Licensee advised Mr. Oakes that her respite caregiver would be staying in the Licensee's home and caring for another foster child while the Licensee was indisposed as a result of the operation. Mr. Oakes indicated that he was out of options regarding the child and put pressure on the Licensee to accept the placement before her surgery. The Licensee accepted the placement and the child was placed in her home on April 9, 2015.³

4. Debra Rimpson, the Licensee's mother, is the Licensee's back-up caregiver. Ms. Rimpson successfully completed a background study, and is authorized by Anoka County Social Services to be a back-up caregiver for the Licensee.⁴

5. The foster child who was placed with the Licensee had mental health problems, was considered vulnerable, and had a history of eloping. Although Mr. Oakes was aware of this information at the time of the placement, neither Mr. Oakes nor any other person from Anoka County Social Services expressed any particular concerns or need for restrictions regarding the child or provided any information regarding the child's history, vulnerability, or mental health condition to the Licensee. Typically, in Anoka County, children are placed in foster care homes without a written

¹ Testimony (Test.) of Denise Ne'Shelle Odom; Test. of Marqueta W. Hainje; Exhibits (Ex.) 1 and 100.

² Test. of D. Odom; Test. of M. Hainje.

³ Test. of D. Odom; Test. of M. Hainje; Exs. 1 and 100.

⁴ Test. of D. Odom; Test. of M. Hainje; Exs. 1 and 100.

referral, and placing agencies rely on the social worker to provide details about the child's history and needs to the foster parent.⁵

6. The Licensee underwent knee surgery on April 13, 2015, and following the surgery, went to stay with a daughter in the daughter's home. Ms. Rimpson was staying in the Licensee's home and caring for the foster child and another foster child living in the home.⁶

7. On April 14, 2015, the foster child requested permission from Ms. Rimpson to visit a friend in Brooklyn Park, and travel with the friend by bus to the Mall of America. Ms. Rimpson referred the request to the Licensee, and the Licensee, without consulting with Mr. Oakes, approved the request, subject to the conditions that the foster child contact Ms. Rimpson every two hours by telephone and either be back in the foster home or be picked up by Ms. Rimpson by 9:00 p.m.⁷

8. On April 14, 2015, Ms. Rimpson left the foster child with the friend at the front door of an apartment building in Brooklyn Park. Ms. Rimpson did not go into the friend's apartment and did not inquire as to the people present in the apartment or the degree, if any, of adult supervision present in the apartment. Ms. Rimpson instructed the foster child to contact her every two hours and gave the child her telephone number. The foster child had in her possession a bus pass and two or three dollars.⁸

9. The foster child did not contact Ms. Rimpson and did not return to the foster home on the evening of April 14, 2015, or the early morning hours of April 15, 2015.⁹

10. Ms. Rimpson did not call Mr. Oakes, Anoka County Social Services, or the police to report the absence of the foster child, and did not advise the Licensee that the foster child had failed to contact her and return.¹⁰

11. On the morning of April 15, 2015, Hennepin County Child Protection contacted Mr. Oakes and requested that he take custody of the foster child. The Licensee first learned of the foster child's absence when she was contacted by telephone by Mr. Oakes at 10:00 a.m. on April 15, 2015, while she was staying in her daughter's home. On that morning, Mr. Oakes returned the foster child to the Licensee's home and, in the absence of the Licensee, left the foster child with Ms. Rimpson.¹¹

⁵ Test. of D. Odom; Test. of M. Hainje; Exs. 1 and 100.

⁶ Test. of D. Odom; Test. of M. Hainje; Exs. 1 and 100.

⁷ Test. of D. Odom; Test. of M. Hainje; Exs. 1 and 100.

⁸ Test. of M. Hainje; Ex. 1.

⁹ Test. of M. Hainje; Exs. 1 and 100.

¹⁰ Test. of D. Odom; Test. of M. Hainje; Exs. 1 and 100.

¹¹ Test. of D. Odom; Test. of M. Hainje; Exs. 1 and 100.

12. On April 16, 2015, Marqueta W. Hainje, an Anoka County Social Services child foster care licenser, interviewed the Licensee and Ms. Rimpson by telephone.¹²

13. The foster child was removed from the Licensee's foster care home on April 17, 2015, and placed in another foster home.¹³

14. By letter to the Commissioner of the Department of Human Services dated April 29, 2015, Ms. Hainje described the incident and recommended "that the child foster care license of Denise Ingram be placed on a conditional status." Ms. Hainje made the recommendation for a conditional license instead of license revocation because she was concerned that the other foster child living in the Licensee's home, with whom the Licensee had a long-term relationship, would have to be moved, and that revocation might have an adverse effect on the Licensee's employment opportunities.¹⁴

15. By letter to the Commissioner dated September 8, 2015, Ms. Hainje changed her recommendation to one of license revocation. She changed her recommendation because she had been advised by the Department of Human Services that the remaining foster child could continue to reside in the Licensee's home under a different program.¹⁵

16. The Commissioner issued an Order of Revocation dated October 26, 2015. The Licensee duly appealed from the Order by letter dated October 26, 2015.¹⁶

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

CONCLUSIONS OF LAW

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

2. The Notice and Order for Pre-hearing Conference is proper in all respects and the Department complied with all substantive and procedural requirements of law and rule.

3. At a hearing on the sanctions to be imposed upon a child foster care license, the Commissioner of the Department of Human Services 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. If the Commissioner demonstrates that reasonable cause existed, the burden of proof shifts to the license holder to demonstrate by a preponderance of the

¹² Test. of M. Hainje.

¹³ Test. of M. Hainje; Ex. 1.

¹⁴ Test. of M. Hainje; Ex. 1.

¹⁵ Test. of M. Hainje; Ex. 2.

¹⁶ Ex. 100.

evidence that the license holder was in full compliance with those laws and rules at the relevant times.¹⁷

4. Minnesota Statutes section 245A.07 (2014) states, in part:

Subdivision 1. Sanctions; appeals; license. (a) In addition to making a license conditional under section 245A.06, the commissioner may suspend or revoke the license, impose a fine, or secure an injunction against the continuing operation of the program of a license holder who does not comply with applicable law or rule. When applying sanctions authorized under this section, 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.

.....

Subd. 3. License suspension, revocation, or fine. (a) The commissioner may suspend or revoke a license, or impose a fine if:

(1) a license holder fails to comply fully with applicable laws or rules.

5. Minnesota Statutes section 245A.04, subdivision 6 (2014), states:

Commissioner's evaluation. Before issuing, denying, suspending, revoking, or making conditional a license the commission shall evaluate information gathered under this section. The commissioner's evaluation shall consider facts, conditions, or circumstances concerning the program's operation, the well-being of persons served by the program, available consumer evaluations of the program, and information about the qualifications of the personnel employed by the applicant or license holder.

6. Minnesota Rules part 2960.3010 (2015) states, in part:

Subp. 5. Basic services. "Basic services" means services provided at the foster home to the foster child that meets the foster child's basic need for food, shelter, clothing, medical and dental care, personal cleanliness, privacy, spiritual and religious practice, safety, and adult supervision.

.....

Subp. 25. Foster parent. "foster parent" means an individual licensed under Minnesota Statutes to provide foster care.

7. Minnesota Rules part 2960.3080 (2015) states, in part:

¹⁷ Minn. Stat. § 245A.08, subd. 3(a).

Subp. 2. Screening. The license holder must cooperate with the placing agency to ensure that the child's needs are identified and addressed.

....

Subp. 5. Cooperation required. The license holder must cooperate with the child's placing agency according to items A and B.

A. The license holder must provide basic services to the child

Subp. 6. Foster care services. The license holder must:

....

D. explain house rules and tell the foster child about the license holder's expectations about behavior, the care of household items, and the treatment of others; and

E. know the whereabouts of the child in the license holder's care. The license holder must be guided by the case plan or court order in determining how closely to supervise the child. The license holder must immediately notify the placing agency if the child runs away or is missing.

8. The Licensee is a foster parent licensed by the Department to provide foster care, and is subject to the provisions in Minn. R. 2960.3000-.3340 (2015).

9. By not reporting the absence of the foster child to Anoka County Social Services or the police, the Licensee failed to comply with Minn. R. 2960.3080, subp. 6.E.

10. The Department has demonstrated, by a preponderance of the evidence, reasonable cause to take disciplinary action against the Licensee's license.

11. The Licensee has failed to demonstrate, by a preponderance of the evidence, that she was in full compliance with all applicable law and rules at all times relevant to this proceeding.

12. The nature, chronicity and severity of the Licensee's violation does not warrant revocation of her license.

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

RECOMMENDATION

IT IS RECOMMENDED that the Commissioner of the Department of Human Services **VACATE** the Order of Revocation and issue a correction order and an order for a conditional license pursuant to the provisions of Minn. Stat. § 245A.06, subd. 1(a) (2014).

Dated: February 16, 2016



STEPHEN D. SWANSON
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 (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 64989, 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 material facts in this case are not in dispute, and can be concisely stated as follows. Under pressure from Anoka County Social Services, the “placing agency,” as that term is defined in Minn. R. 2960.3010, subp. 33, the Licensee accepted for placement a 16-year-old. Minnesota rules require that a case plan¹⁸ be prepared for each child placed in foster care and that the placing agency provide the foster parent with specific written information concerning a child to be placed, including “the child’s placement history summary,” and a “description of the child’s presenting problems, including medical problems circumstances leading to placement, mental health concerns, safety concerns including assaultive behavior, and victimization concerns.”¹⁹ Notwithstanding these requirements, Anoka County Social Services placed the child with the Licensee without providing the Licensee with any information about the child’s history, mental health concerns, proclivity for elopement, or degree of sophistication and vulnerability.²⁰

The required information is critical to an assessment by a foster parent and the placing agency of the level of adult supervision that is necessary and appropriate to protect the health and safety of a foster child. For reasons that are not explained, the Licensee did not have the required and necessary information in this case. The information was essential, as, in fact, the foster child placed by Anoka County Social Services with the Licensee had mental health problems, was considered vulnerable, and had a history of eloping.

The child was placed in the Licensee’s foster care home on April 9, 2015. On April 14, 2015, the foster child requested permission of the Licensee’s authorized back-up caregiver to visit a friend in Brooklyn Park and travel to the Mall of America by bus. The Licensee approved the request, subject to the conditions that the foster child check in every two hours by telephone with the back-up caregiver and either return to the foster care home or be picked up by 9:00 p.m. The back-up caregiver left the foster child with the friend at the entrance to an apartment building in Brooklyn Park, without seeing the apartment or the people in the apartment, and without ascertaining the level of adult supervision available to the foster child while absent from the foster home.

The foster child did not contact the back-up caregiver by telephone and did not return to the foster home on April 14th or the early morning hours of April 15th. The back-up caregiver did not contact the police, Anoka County Social Services, or the

¹⁸ A “case plan” is defined to mean “a plan of care for a foster child that is developed by the supervising agency with the child’s parents and license holder and monitored by the placing agency.” Minn. R. 2960.3010, subp. 8.

¹⁹ Minn. R. 2960.3080, subp. 4.A, G.

²⁰ At the hearing, Ms. Hainje, the Anoka County Social Services licenser, testified that Mr. Oakes, the county social worker who had convinced the Licensee to accept the placement of the child, had given information concerning the child to the Licensee and had divulged that information to Ms. Hainje in electronic messages. However, Ms. Hainje did not testify as to the content of the messages, Mr. Oakes was not called to testify, and the messages were not produced at the hearing. Therefore, the Licensee’s testimony that she was not provided with any information about the foster child went unchallenged.

Licensee to report the foster child's absence. At some unspecified time, the foster child came into contact with Hennepin County Child Protection, and Child Protection returned her to Mr. Oakes on the morning of April 15th. Mr. Oakes then returned the foster child to the Licensee's foster care home later that morning.²¹ The foster child was removed from the home on April 17, 2017.

The failure to report the foster child's absence constitutes a clear violation of law,²² and supports the Commissioner's authority to impose a sanction on the Licensee's license.²³ While the fact that the placing agency did not provide the Licensee with required and necessary information about the foster child may inform a judgment regarding the discretion exercised by the Licensee in permitting the foster child to visit a friend in Brooklyn Park, it in no way excuses the failure to report the foster child's absence.

The Administrative Law Judge recognizes that the Commissioner has broad discretion in determining the type and severity of the sanction to be imposed upon proof of a licensing violation. At the same time, the evidence adduced at the contested case hearing, some of which was not available to the Commissioner at the time of the issuance of the Order of Revocation, places the Administrative Law Judge in an ideal position to make a recommendation to the Commissioner regarding the type of sanction to be imposed.

The statute provides that when applying sanctions, 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."²⁴ According to the testimony of the county licenser, the Licensee has distinguished herself by accepting difficult child foster care placements and building a positive working relationship with Anoka County Social Services. But for the violation in the present case, she has a five-year record free of incidents or adverse licensing actions.²⁵ Accordingly, "chronicity" is not an issue in this case.

Given the lack of worldly sophistication and the vulnerability of many 16-year-olds, the Administrative Law Judge considers the violation in this case to be "severe" and one that placed the foster child in possible danger. However, the Licensee's responsibility for the violation is ameliorated by the fact that the Licensee was not aware that the foster child had not returned to the foster home, and by the fact that the Licensee had not been given the information about the foster child needed to determine

²¹ At the hearing, Ms. Hainje testified that the foster child had reported that she had had sexual contact with two individuals while in the apartment in Brooklyn Park. This testimony was hearsay, perhaps twice removed, and the report was not substantiated in any way. The testimony does not have sufficient indicia of reliability to support a finding of fact. Furthermore, in the view of the Administrative Law Judge, the conduct of the child while absent from the foster home is not relevant to the issues presented in this case.

²² Minn. R. 2960.3080. subp. 5.B.

²³ Minn. Stat. § 245A.07, subd. 3(1).

²⁴ Minn. Stat. § 245A.07, subd. 1(a).

²⁵ Test. of M. Hainje.

the appropriate level of adult supervision to protect the health and safety of the foster child.

In the view of the Administrative Law Judge, given the Licensee's clean record, her willingness to accept difficult placements, her positive relationship with Anoka County Social Services, and the need for safe and supportive foster care homes in Minnesota, a conditional license is a more appropriate sanction in this case than license revocation. This view is supported by Anoka County Social Services' initial recommendation to the Commissioner that the Commissioner issue a conditional license. That recommendation was based upon concerns that the other foster child living in the Licensee's home, with whom the Licensee had established a long-term relationship, would be required to move, and that license revocation would have an adverse effect upon the Licensee's employment opportunities. Clearly, the incident did not suggest concerns to Anoka County Social Services that the remaining foster child's health, safety, or rights were imminently endangered by inadequate supervision on the Licensee's part.²⁶ The Administrative Law Judge concurs.

For the foregoing reasons, the Administrative Law Judge recommends that the Commissioner rescind the Order of Revocation and issue a correction order and impose a conditional license.

S. D. S.

²⁶ See Minn. Stat. § 245A.06, subd. 1(a).